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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

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

INTRODUCTION

When a Court rules on a 12(b)(6) Motion to Dismiss, it must explain itself "with sufficient particularity as to apprise the parties and any appellate court of the grounds" for that ruling. Mont. R. Civ. P. 52(a)(3). The Court's Motion to Dismiss Order ("Order") now contains no written analysis—none—explaining its novel conclusion that Plaintiffs' Requests for Relief 1, 2, 3, 4, and 5 are issues suitable for judicial resolution rather than political questions left to the representative branches of Montana's government. *See Juliana v. United States*, 947 F.3d 1159, 1169–73 (9th Cir. 2020) (explaining, in detail, why similar claims raised nonjusticiable political questions); *Sagoonick v. State*, 503 P.3d 777, 793–802 (Alaska 2022) (explaining, in detail, why similar claims raised nonjusticiable political questions); *but see* Order (Doc. 46 at 21–22, as amended by Doc. 154) (now offering no explanation for why it reached the opposite conclusion).

Plaintiffs admit that the Order "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." (Doc. 178 at 2) (emphasis added). On this point, the State agrees. Whatever reasoning underlies the Court's conclusion as to these "other requests" is—at most—implicit. Rule 52(a)(3) requires this Court to make that reasoning *explicit*.

Plaintiffs try to downplay the issue, claiming that "[h]ad the Court believed any other requests for relief implicated the political question doctrine, it would have said so." (Doc. 178 at 2.) But Rule 52(a)(3) forbids "because-I-said-so" analysis. Summarily pronouncing a ruling is not enough. And Rule 60(a) clearly allows this

Court to correct any inadvertent omissions in its order. Mont. R. Civ. P. 60(a) (allowing a court to correct a mistake arising from oversight or omission whenever one is found in an order). The State presumes that the Court did not intend to omit any analysis on the dispositive political question issue as it relates to half of Plaintiffs' claims.

Plaintiffs know all this. So they take the only option left to them: they rely on mischaracterizations of the State's Motion, claiming that the State is using this motion as a pretext to delay litigation or rehash its motion to dismiss. Plaintiffs' attempts to obscure the grounds for the State's motion are misleading. To be clear: the State does not seek to relitigate its Motion to Dismiss. Nor does it ask the Court to change its ruling on that Motion. The State asks the Court to explain why it ruled the way that it did. The Court is clear *that* it reached the opposite conclusion from *Juliana* and *Sagoonick,* believing that five of Plaintiffs' claims are appropriate for judicial resolution. But the Court never explains *why.*

At bottom, the State and Plaintiffs agree that whatever rationale underlies the Court's political question ruling is "implicit." Rule 52(a)(3) is clear: the Court must make it explicit. The parties should not have to guess at the Court's rationale for concluding—unlike the Ninth Circuit in *Juliana* and the Alaska Supreme Court in *Sagoonick*—that these claims are appropriate for judicial resolution. Rule 52(a)(3) requires this Court to put its analysis down on paper.

I. The Court's Motion to Dismiss Order doesn't explain *why* Requests for Relief 1, 2, 3, 4, and 5 don't violate the political question doctrine.

When it first ruled on the State's Motion to Dismiss, the Court concluded that some of Plaintiffs' claims raised nonjusticiable political questions, while others did not. *See generally* (Doc. 46.) The line dividing the justiciable from the nonjusticiable—the original Order said—was the form of relief. The Court wrote that it was "dismissing Youth Plaintiffs' claims for *injunctive* relief," but would "allow Plaintiffs' claims for *declaratory* relief to move forward." (Doc. 46 at 21–22.) (emphasis added).

But the Court recently clarified that this distinction between declaratory and injunctive relief was a clerical error, as was language suggesting that the Court was dismissing all of Plaintiffs' injunctive relief claims. (Doc. 154 at 3.) This "clarification" omitted the sole rationale underlying the Court's novel holding that Plaintiffs' Requests for Relief 1, 2, 3, 4, and 5 don't ask the court to resolve political questions. Plaintiffs concede as much. They recognize that any reasoning on this point in the Court's Order is "implicit[.]" (Doc. 178 at 2.) Thus, the Order has omitted any written explanation of its "implicit" conclusion that Requests 1, 2, 3, 4, and 5 survive a political question analysis.

II. The Court must explain why Requests for Relief 1, 2, 3, 4, and 5 don't violate the political question doctrine.

The State asks this Court to explain the rationale underlying this far-reaching and novel conclusion. *See Juliana*, 947 F.3d at 1169–73 (explaining, in detail, why similar plaintiffs' claims raised nonjusticiable political questions); *see Sagoonick*, 503

P.3d at 793–802 (explaining, in detail, why similar plaintiffs' claims raised nonjusticiable political questions); *see* Order (Doc. 46 at 20–22, as amended by Doc. 154) (now offering no explanation for why it reached the opposite conclusion). The Court should amend its Order to explain why, in the Court's view, Requests for Relief 1, 2, 3, 4, and 5 don't violate the political question doctrine.

Juliana and *Sagoonick*—both of which involved similar claims by "youth plaintiffs" and Our Children's Trust—highlight the importance of thorough analysis on this critical issue. *Juliana*, after all, turned entirely on whether those plaintiffs' claims raised nonjusticiable political questions. 947 F.3d at 1170–74. The Ninth Circuit panel spent four pages discussing why those claims presented political questions. *Id.* *Sagoonick* turned on the same question. The Alaska Supreme Court provided nine pages of detailed analysis explaining its conclusion that similar claims violated the political question doctrine. *See id.* at 793–802. Like the Ninth Circuit in *Juliana* and the Alaska Supreme Court in *Sagoonick*, this Court should provide detailed, written analysis explaining the grounds underlying its political question holding. Indeed, Rule 52(a)(3) requires that it do so.

That this Court reached the opposite conclusion from *Juliana* and *Sagoonick* suggests that even more careful explication is required here. Yet the Order contains *no explanation* for the Court's implicit conclusion that Requests 1, 2, 3, 4, and 5 are not political questions. Rule 60(a) allows the Court to correct that omission at any time. *See* Mont. R. Civ. P. 60(a) ("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.") And Rule 52(a)(3) requires the Court to do so. ("When ruling on a motion under Rule 12 ... a court *shall* specify the grounds therefor with sufficient particularity as to apprise the parties and any appellate court of the rationale underlying the ruling.") (emphasis added).

Plaintiffs never identify the grounds underlying the Court's conclusion that Requests 1, 2, 3, 4, and 5 aren't political questions. Instead, they say that it's enough for the Court to keep the rationale for this holding to itself. *See also* (Doc. 178. At 2) ("Had the Court believed any other requests for relief implicated the political question, it would have said so.") But that's just wrong. Rule 52(a)(3) doesn't permit "because-I-said-so" legal conclusions on a Rule 12 Motion. Rather, the Rule requires that the Court explicitly state the reasons why it reached the conclusion it did. Mont. R. Civ. P. 52(a)(3).

Plaintiffs correctly note that Rule 60(a) isn't a device for relitigating Motions, but only "allows the doing, at a later date, of what was originally intended but not accomplished." *See* Pls.' Resp. Br. at 4 (quoting *In re Marriage of Cannon*, 215 Mont. 272, 275, 697 P.2s 901, 902 (1985)). The State agrees. But unlike Plaintiffs, the State presumes that the Court originally intended to explain its reasoning on the crucial question of whether Plaintiffs' RFR 1, 2, 3, 4, and 5 raised nonjusticiable political questions. If the Court intended to omit any explanation of this holding from its order, it should say so.

III. Plaintiffs mischaracterize the State's Motion.

Plaintiffs cannot seriously dispute the State's Motion on the merits, so they instead try to confuse by mischaracterizing the State's Motion. *See* (Doc. 178 at 2) (acknowledging that the Court's reasoning was implicit).

Plaintiffs first accuse the State of relitigating its Motion to Dismiss. Wrong. The State doesn't ask the Court to change its ruling. It asks the Court to explain that ruling. It is difficult to see how the State could've made this point any clearer. *See, e.g.*, (Doc. 160 at 4) ("The court must explain *why* Request for Relief # 5 doesn't violate the political question doctrine.") (emphasis added); *id.* at. 6 ("In short, this Court has implicitly concluded Request for Relief # 5 is justiciable ... 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.") (emphasis added) (quoting Mont. R. Civ. P. 52(a)(3); *id.* 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 .... What little analysis the Order originally contained on this issue has been eviscerated by the Court's recent clarification order."); *id.* at 9 ("This Court must explain the rationale for its conclusion that request 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.") To say it once more: the State does not seek to relitigate its Motion to Dismiss or to obtain a more favorable ruling on that Motion. It just wants to know why the Court ruled the way it did. *See* Mont. R. Civ. P. 52(a)(3) (requiring a Rule 12 order to explain itself "with sufficient

particularity as to apprises the parties and any appellate court of the rationale underlying the ruling.")

Plaintiffs again try to mislead when they argue that "it is neither necessary nor appropriate for this Court to *reconsider* Defendants' political question arguments at this late stage." Pls.' Resp. Br. at 6. At the risk of redundancy: the State doesn't ask the Court to *re*consider the political question issue—the State presumes that this Court already considered those arguments. Instead (and once again) the State simply asks the Court to do what Rule 52(a)(3) requires: explain *in writing* its reasons for concluding that Requests for Relief 1, 2, 3, 4, and 5 survive a political question analysis.

And, contra Plaintiffs, the State hasn't raised this motion as a tactic to delay this litigation.[1] The State has been clear for months that "*[if]* the Court did not dismiss Request for Relief # 5, its order contains no analysis, reasoning, or explanation of that holding." (Doc. 114, 6 n.1) (State's Reply in Support of First Motion for Clarification).

Finally, Plaintiffs' reliance on *Board of Regents of Higher Educ. v. State*, 2022 MT 128, 409 Mont. 96, 512 P.3d 748 is puzzling. *Board of Regents* didn't involve a nonjusticiable political question. But even more fundamentally, in *Board of Regents*, the Montana Supreme Court explained its rationale. *See id.* ¶¶ 11–25. As explained

[1] Indeed, the State has no reason for delaying this litigation, despite Plaintiffs' odd insistence to the contrary.

above, the Court here did not.[2] *Board of Regents* has nothing to do with the issues the State's motion raises.

Plaintiffs' responses to the State's motion evince either a naked attempt to misdirect the Court from the clear requirements of Rule 52(a)(3) or a simple failure of reading comprehension. It seems odd that Plaintiffs would resist this Court explaining the grounds supporting a conclusion that unquestionably favors Plaintiffs.

CONCLUSION

This Court should amend its Order on the State's Motion to Dismiss, to explain its political question analysis as to Requests for Relief 1, 2, 3, 4, and 5 "with sufficient particularity as to apprise the parties" of the grounds for that ruling. Mont. R. Civ. P. 52(a)(3). Plaintiffs and the State agree that whatever reasoning the order contains on this critical issue is implicit. Rule 52(a)(3) requires this Court to make it explicit. And this rule isn't some obscure procedural arcanum. Written opinions give the parties, the appellate court, and the public insight into the Court's thinking. They also require the Court to carefully work through the reasons for its conclusions. As the Montana Supreme Court has explained,

> The function of an opinion is to state the reasons which led the court to decide the case the[] way it did. Moreover, since in the process of preparing an opinion the judge must discipline his thinking, he is more apt to reach a just decision in a complex case if he reduces his reasoning to writing. Referring to the fruitful effect of the process, Chief Justice Hughes once commented, 'The importance of written opinions as a protection against judicial

[2] The State has cited to several cases that are analogous, in which the Montana Supreme Court reversed, remanded, or both district court orders that violated Rule 52(a)(3).

> carelessness is very great.' Opinions may be of service to the litigants and to counsel in determining what their future course should be. The opinion may point the way to an appeal, or it may eliminate one. In either event the practical value to those most concerned is great.

Ballantyne v. Anaconda Co., 175 Mont. 406, 409, 574 P.2d 582, 584 (1978) (quotation omitted). This Court cannot shirk its duty to thoroughly analyze the critical political question issue and rely on the Supreme Court "to provide a legally adequate reason for its order" later. *Id.*

DATED this 10th day of August, 2022.

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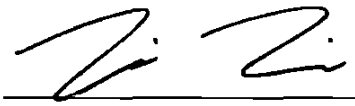

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Dia C. Lang

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MONTANA FIFTH JUDICIAL DISTRICT COURT
MADISON COUNTY

VALLEY GARDEN LAND & CATTLE LLC,

Plaintiff,

v.

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY AND A.M. WELLES, INC.,

Defendants,

and

STATE OF MONTANA, BY AND THROUGH THE ATTORNEY GENERAL'S OFFICE

Intervenor-Defendant.

Case No. DV-29-2022-0047

DEFENDANT-INTERVENOR STATE OF MONTANA'S NOTICE OF INTERVENTION

Pursuant to Rule 5.1(b) of the Montana Rules of Civil Procedure, the State of Montana, by and through the Office of the Attorney General, hereby intervenes in this case to address the Plaintiffs' potential constitutional challenge to provisions of MCA § 82-4-432 raised in Plaintiffs' First Complaint dated June 21, 2022.

DATED this 1st day of August, 2022.

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Date: August 1, 2022

/s/ Dia C. Lang
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I, Timothy Longfield, hereby certify that I have served true and accurate copies of the foregoing Notice - Notice to the following on 08-01-2022:

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Electronically signed by Dia Lang on behalf of Timothy Longfield
Dated: 08-01-2022