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FILED

SEP 22 2022

JANICE BEAVER, Clerk of District Court
LISA KALLIO Deputy Clerk

**MONTANA FIRST JUDICIAL DISTRICT COURT
BROADWATER COUNTY**

RIKKI HELD, et al.,

Plaintiff,

v.

STATE OF MONTANA, et al.,

Defendant.

Cause No. CDV-2020-307

**ORDER ON SECOND
RULE 60(a) MOTION FOR
CLARIFICATION**

Defendants State of Montana, et al., filed a second motion for clarification on July 22, 2022. The motion, filed under Montana Rules of Civil Procedure 60(a) and 52(a)(3), asks this court to explain why Youth Plaintiffs' requests for relief #1-5 are in fact justiciable and not political questions for the other two branches of government. While the State's motions are clearly an attempt to relitigate the motion to dismiss, this court will fully address the issues because they are critically important to the separation of powers and role of the judiciary in Montana. Professor Anthony Johnstone, recently nominated to the

1 Ninth Circuit, perhaps best articulated the difference between federal
2 justiciability standards and the standards in Montana: “[t]he open-textured
3 vesting of ‘judicial power’ and broad terms of state jurisdictional statutes leaves
4 state courts ample space to depart from lockstep federal notions of standing,
5 ripeness, mootness, advisory opinions, and political questions . . . the courthouse
6 doors open a little wider to litigants in Montana.” Anthony Johnstone, *The*
7 *Montana Constitution in the State Constitutional Tradition*, 190, 223 (2021).

8 The State has presented the following two points of clarification:

9 I. Why don’t requests for relief #1-4 (declaratory relief) violate the
10 political question doctrine?

11 II. Why doesn’t request for relief #5 violate the political question
12 doctrine?

13 DISCUSSION

14 I. Do Youth Plaintiffs’ claims for declaratory relief (requests for relief 15 1-4) violate the political question doctrine?

16 “It is a proposition too plain to be contested, that the constitution
17 controls any legislative act repugnant to it . . . It is emphatically the province and
18 the duty of the judicial department to say what the law is.” *Marbury v. Madison*,
19 5 U.S. (1 Cranch) 137, 177 (1803). Constitutional and statutory interpretation are
20 still squarely within the purview of the judicial branch, but the courts have self-
21 imposed limits of justiciability known as prudential standing. The Court recently
22 articulated one limit of prudential standing, the political question doctrine, in
23 *Brown v. Gianforte*, stating: “[a]n issue is not properly before the judiciary when
24 ‘there is a textually demonstrable constitutional commitment of the issue to a
25 coordinate political department or a lack of judicially discoverable and

1 manageable standards for resolving’ the issue. However, ‘not every matter
2 touching on politics is a political question.’” *Brown v. Gianforte*, 2021 MT 149,
3 ¶ 21, 404 Mont. 269, 280, 488 P.3d 548, 555 (citations omitted). Countervailing
4 factors that weigh against prudential standing limitations are “the importance of
5 the question to the public,” and “whether the statute at issue would effectively be
6 immunized from review if the plaintiff were denied standing.” *Heffernan v.*
7 *Missoula City Council*, 2011 MT 91, ¶ 33, 360 Mont. 207, 255 P.3d 80 (citations
8 omitted).

9 While Justice Marshall thought it “a proposition too plain to be
10 contested,” the State is apparently unsure whether the judiciary has the power to
11 declare statutes unconstitutional. This court assures the State that it can. Youth
12 Plaintiffs’ requests for relief 1-4 simply ask this court to determine whether the
13 State Energy Policy, Mont. Code Ann. 90-4-1001(c)-(g), and the Climate Change
14 Exception to the Montana Environmental Policy Act (MEPA), Mont. Code Ann.
15 75-1-201(2)(a), with their appurtenant acts and policies, violate the Montana
16 Constitution — particularly the “clean and healthful environment” clause of
17 Art. II, Sec. 3, and the “non-degradation” provision under Art. IX, Sec. 1.

18 The State mischaracterizes subsections two and three of Art. IX,
19 Sec. 1 as committing the interpretation of Art. IX to the legislature, what would
20 otherwise be known as a non-self-executing provision, but this is incorrect. Like
21 the old constitutional guarantee of state assistance benefits under *Butte*
22 *Community Union*, and guaranteed public education under *Columbia Falls*,

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1 “[o]nce the legislature has acted, or ‘executed,’ a provision that implicates
2 individual constitutional rights, courts can determine whether that enactment
3 fulfills the legislature's constitutional responsibility.” *Columbia Falls Elem. Sch.*
4 *Dist. No. 6 v. State*, 2005 MT 69, ¶ 17, 326 Mont. 304, 109 P.3d 257; see also
5 *Butte Community Union v. Lewis*, 219 Mont. 426, 712 P.2d 1309 (Court upheld
6 district court’s determination that the legislature’s act eliminating general
7 assistance payments to “able-bodied persons” was unconstitutional because the
8 legislature was failing to meet its obligations under Art. XII, Sec. 3 (Amd. Const.
9 Amend. No. 18, approved Nov. 8, 1988)). The provisions of Art. IX, Sec. 1
10 similarly direct the legislature to provide the administration, enforcement, and
11 remedies for the protection of the environment, and therefore the judiciary’s role
12 is to ensure they are fulfilling those duties.

13 This court agrees with the State that it is difficult to determine
14 what exactly constitutes a clean and healthful environment, but Montana courts
15 have undertaken it before. The seminal case, as the State knows, is *Montana*
16 *Envtl. Info. Ctr. v. Dep’t of Env’tl. Quality (MEIC)*, 1999 MT 248, 296 Mont. 207,
17 988 P.2d 1236. In *MEIC*, the Court ultimately concluded that the plaintiffs had
18 the ability to challenge the constitutionality of statutory provisions that allowed
19 an agency to bypass environmental review. *MEIC*, ¶¶ 77-79. The Court famously
20 stated the Montana Constitution “does not require that dead fish float on the
21 surface of our state’s rivers and streams before its farsighted environmental
22 protections can be invoked.” *Id.*, ¶ 77. The same is true, here: Youth Plaintiffs
23 sufficiently invoked their fundamental constitutional rights, and they made a

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1 showing that the statutes at issue implicate those rights. The applicable legal
2 standard for review of statutes infringing fundamental rights is strict scrutiny. *Id.*,
3 ¶ 63. Youth Plaintiffs are challenging the constitutionality of statutes that allow
4 the State to bypass environmental review, on all fours with *MEIC*.

5 The State points to *Juliana v. United States*, 947 F.3d 1159 (2019)
6 as authority for dismissing Youth Plaintiffs’ remaining claims as non-justiciable
7 political questions, but the State’s reliance on *Juliana* is misguided. First of all,

8 “[t]his Court need not blindly follow the United States Supreme
9 Court when deciding whether a Montana statute is constitutional
10 pursuant to the Montana Constitution . . . We will not be bound by
11 decisions of the United States Supreme Court where independent
12 state grounds exist for developing heightened and expanded rights
13 under our state constitution.”

14 *Butte Community Union* at 433.

15 Plaintiffs in *Juliana* were bringing a substantive due process claim, not
16 challenging the constitutionality of a statute. Furthermore, the United States
17 Constitution does not include the right to a clean and healthful environment.
18 *Juliana* was instructive as to case-in-controversy standing and causation, but the
19 parallels end there.

20 In *Juliana*, the Ninth Circuit found that the request for a remedial
21 plan violated the political question doctrine, exactly how this court ruled on
22 Youth Plaintiffs’ identical request. Importantly, however, the declaratory relief
23 sought by plaintiffs in *Juliana* was found to be likely non-justiciable due to the
24 perceived lack of redressability, not the political question doctrine. *Juliana* at
25 1171. As this court explained in the order on the State’s motion to dismiss, unlike
federal courts Montana courts may review claims that can “alleviate” an injury,

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1 even if they do not completely redress it. Order on Motion to Dismiss,
2 15:19–16:3; *Larson v. State*, 2019 MT 28, ¶ 46, 394 Mont. 167, 434 P.3d 241;
3 *Heffernan*, ¶ 33. While declaratory relief in this case may not reverse global
4 climate change in its entirety, it certainly could alleviate it.

5 This court agrees that climate change is a politically-charged issue,
6 but whether the State’s energy statutes violate the Montana constitution is a
7 question for the courts, not the other branches of government. Constitutional and
8 statutory interpretation are “the very essence of judicial duty.” *Marbury* at 177.
9 Furthermore, climate change is of paramount public importance, and if the
10 State’s position on so-called political questions were adopted, no controversial
11 legislation would be reviewable by the courts. At the most basic level, the
12 judiciary is not subservient to the legislature. To hold this controversy as non-
13 justiciable due to the political question doctrine would completely upset the
14 separation of powers.

15 **II. Does request for relief #5 violate the political question doctrine?**

16 At the outset of this analysis, it is worth noting the Court’s recent
17 decision in *Bd. of Regents of Higher Educ. of Mont. V. State*, 2022 MT 128,
18 409 Mont. 96, 512 P.3d 748. In that case, the Court affirmed the district court’s
19 ruling that a statute was unconstitutional as applied to the Board of Regents and
20 enjoined the State from enforcing the statutes. *Bd. of Regents of Higher Educ. of*
21 *Mont.*, ¶ 2, ¶ 8.

22 In its first order on clarification, this court explained that request
23 for relief #5 “would be a logical extension and result” if the State Energy Policy
24 and Climate Change Exception are declared unconstitutional. The State,
25 unwilling to accept that reasoning, has asked for more. Again, the State points to

1 *Juliana* as a deus ex machina that will rescue it from judicial review. It won't.

2 The injunctive relief rejected by the Ninth Circuit as a political
3 question was the remedial plan. *Juliana* at 1171-1173. This court has already
4 rejected Youth Plaintiffs' similar prayer for a remedial plan, their request for an
5 accurate accounting of greenhouse gas emissions, the request for a special master
6 to oversee the remedial plan, and the request for an order retaining the court's
7 jurisdiction over the remedial plan. Request for Relief #5 has no relation, no
8 bearing on the remedial plan. Request for Relief #5 simply asks the court to
9 enjoin the State from subjecting Youth Plaintiffs to allegedly unconstitutional
10 statutes. Once again, it is well within the purview of the judiciary to: a) declare
11 statutes unconstitutional, and b) prevent the State from enforcing unconstitutional
12 statutes.

13 If request for relief #5 was related to the remedial plan, then the
14 State would have a point. However, a plain reading of request #5 leaves no doubt
15 that it is unrelated to the remedial plan or any other injunctive relief that this
16 court already found beyond the judiciary's power. As it was in *Bd. of Regents*, it
17 is perfectly within this court's authority to enjoin the State from enforcing
18 statutes that are declared unconstitutional.

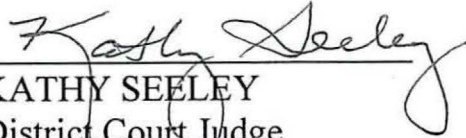
19 To avoid any further confusion:

20 I. Requests for relief #1-4 do not violate the political question
21 doctrine because they simply call for constitutional and statutory interpretation —
22 “the very essence of judicial duty.”

23 II. Request for relief #5 does not violate the political question
24 doctrine because it asks the court to enjoin the State from enforcing allegedly
25 unconstitutional statutes.

1 This order clarifies that the surviving requests for relief do not
2 violate the political question doctrine and are justiciable controversies.

3 DATED this 22 day of September, 2022.

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6 KATHY SEELEY
7 District Court Judge
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KS/sm/CDV-2020-307 Ord Sec Rule 60(a) Mot Clarification