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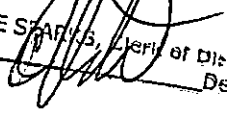
*Attorneys for Plaintiffs*

MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY

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| RIKKI HELD, et al.,<br><br>Plaintiffs,<br><br>v.<br><br>STATE OF MONTANA, et al.,<br><br>Defendants. | Cause No. CDV-2020-307<br><br>Hon. Kathy Seeley<br><br><b>DECLARATION OF LORI G. BYRON IN<br/>SUPPORT OF PLAINTIFFS' RESPONSE<br/>BRIEF IN OPPOSITION TO<br/>DEFENDANTS' MOTION TO<br/>PARTIALLY DISMISS FOR MOOTNESS</b> |
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FILED

APR 14 2023

ANGIE STARKS, Clerk of District Court  
By:  Deputy Clerk

Pursuant to MCA §1-6-105, Lori G. Byron hereby declares as follows:

1. I am an expert and rebuttal witness in the above-entitled action. I am making this declaration in support of Plaintiffs' Response Brief in Opposition to Defendants' Motion to Partially Dismiss for Mootness. I have personal knowledge of the facts I state herein, except as to those stated on information and belief, and if called to testify, I would and could testify competently thereto.

**QUALIFICATIONS & EXPERT TESTIMONY**

2. I was asked to prepare an expert report in this case jointly with Dr. Robert Byron, which was completed on September 30, 2022. In our report, we determined "that climate change and the air pollution associated with it are negatively affecting children in Montana, including these 16 youth Plaintiffs, with a strong likelihood that those impacts will worsen in the absence of aggressive actions to mitigate climate change." Doc. 222, Expert Report at 2. In our expert report we stated: "The opinions expressed in this report are based on the data and facts available to us at the time of writing, as well as based upon our own professional experience and expertise. Should additional relevant or pertinent information become available (through discovery, for example), we reserve the right to supplement the discussion and findings in this expert report." Expert Report at 3.
3. We were also asked to prepare a rebuttal report in this case to respond to statements in the expert reports of Drs. Judith Curry and Terry Anderson with respect to the health impacts of climate change. Doc. 240, Rebuttal Report at 1. In forming our opinions, we reviewed some sources in addition to what we reviewed in forming our opinions in our original expert report. Expert Report Attachment 3; Rebuttal Report Attachment 1. We again reserved the right to supplement our report should additional information become available. Rebuttal Report at 1.

This declaration serves as a supplement to my expert reports based on a new Intergovernmental Panel on Climate Change (IPCC) report.

4. I earned a Bachelor of Science degree in mathematics and a Bachelor of Arts degree in Religion and Philosophy from Kentucky Wesleyan College, graduating *summa cum laude* in 1980. I studied medicine at the University of Louisville and obtained a Doctor of Medicine degree in 1984. I finished my pediatric internship and residency at the University of Alabama-Birmingham in 1987. I spent another year in Emergency Medicine at the Children's Hospital before moving to Montana in 1988. I worked in Crow Agency, Montana, with Indian Health Service 1988-2015, providing primary care, emergency care, and public health services to the Crow Indian children. During that time, a large portion of my work involved mental health and psychological services to victims of trauma and inclement weather. I also attended the deliveries of thousands of babies, and cared for many born premature. I have worked nights, part-time, as a pediatric hospitalist at SCL Health in Billings, Montana since 2013, caring for inpatients, newborns, and emergency department patients. I have decades of experience caring for children who have suffered disruption in their lives and who bear the scars of Adverse Childhood Events, and have followed and cared for the health of such children for many years. I earned a Master of Science degree in Energy Policy and Climate from Johns Hopkins in 2020. My board certification is through the American Board of Pediatrics, from 1988 to present. I served as President of the Montana Chapter of the American Academy of Pediatrics (AAP) from 1996-1999. I received the Deaconess Billings Clinic Foundation Medical Achievement Award in 2000. I earned the Alumni Achievement Award from Kentucky Wesleyan College in 2005. I also won the Native American Child Health Advocacy Award from the American

Academy of Pediatrics in 2005. In 2021, the Unsung Heroes of the Academy of Pediatrics award was presented to me for work in climate and child health.

5. Over the past decade, I (or my husband and I) have presented over 100 times locally, nationally, and internationally on climate change and health. I organize a group of pediatricians across the U.S. for the American Academy of Pediatrics who advocate on climate and health. I currently serve on the Executive Committee of the Council on Environmental Health and Climate Change with the AAP and recently completed a six-year term on the Children's Health Protection Advisory Committee with the Environmental Protection Agency (EPA). I was an author on the 2021 report "Climate Change and Human Health in Montana: A Special Report of the Montana Climate Assessment," as well as other climate and health publications. For additional information regarding my qualifications and background, including my publications, my curriculum vitae is included as Attachment 1 to our expert report.

#### **THE REPEAL OF THE ENERGY POLICY ACT**

6. Counsel for the Plaintiffs informed me that the Montana Energy Policy Act has been repealed by the Montana State Legislature. I do not believe this new turn of events affects or alters the conclusions in our expert report in any way. Our opinions were based upon "Montana's fossil fuels energy system and GHG emissions," which remains in place. Expert Report at 11, 15. We have received no information to suggest that Montana has shifted its policy away from prioritizing fossil fuels. In fact, I have reviewed the Declaration of Anne Hedges that contains information from government officials that suggests that Montana will in fact continue its long-standing policy of promoting fossil fuels. Doc. 300, Hedges Declaration in Support of Plaintiffs' Opposition for Defendants' Motion for Summary Judgment.

7. The health harms that we describe in our expert and rebuttal reports were not based on specific legislation, but rather based on “Montana’s fossil fuel energy system and the resulting air pollution and climate impacts,” because it is the GHG emissions and resulting air pollution and climate impacts that are driving the health harms described in our report. Expert Report at 15. As we said in our expert report: “Simply ‘treating’ health problems caused by air pollution or climate change after they arise – whether it be an asthma flare up, depression from the impacts of heat and drought on a family’s livelihood, or a child born with a birth defect caused by particulate matter – is neither adequate nor acceptable.” Expert Report at 15. Similarly, repealing the Energy Policy Act without changing the climate change-inducing conduct is not adequate or acceptable as it will not change Montana’s reliance on fossil fuels. “The most important interventions are those that address the underlying causes and transition Montana away from extracting and burning fossil fuels.” Expert Report at 15; Rebuttal Report at 4 (“These and other peer-reviewed studies confirm that while climate change is already causing numerous harms to the health of Plaintiffs and Montana’s children, the health impacts will get worse if climate change is not addressed and Montana’s promotion of fossil fuels as an energy source continues. Conversely, action taken by Montana’s government to prevent further contributions to climate change will have significant health benefits for the Youth Plaintiffs.”).

#### **THE IPCC’S NEW SYNTHESIS REPORT**

8. In March 2023, the IPCC issued a new *Summary for Policymakers* for the Synthesis Report of the IPCC Sixth Assessment Report,<sup>1</sup> which is a new source that provides additional support

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<sup>1</sup> Intergovernmental Panel on Climate Change, *Summary for Policymakers, in Synthesis Report of the IPCC Sixth Assessment Report (AR6)* (2023), available at <https://www.ipcc.ch/report/ar6/syr/>.

for the findings and conclusions contained in both our expert and rebuttal reports. Specifically, as to climate change and human health, the report states:

- “In all regions increases in extreme heat events have resulted in human mortality and morbidity (*very high confidence*). The occurrence of climate-related food-borne and water-borne diseases (*very high confidence*) and the incidence of vector-borne diseases (*high confidence*) have increased.” IPCC Summary for Policy Makers at A.2.5.
- “Individual livelihoods have been affected through, for example, destruction of homes and infrastructure, and loss of property and income, human health and food security, with adverse effects on gender and social equity.” IPCC Summary for Policymakers at A.2.6.
- “In the near term, every region in the world is projected to face further increases in climate hazards (*medium to high confidence*, depending on region and hazard), increasing multiple risks to ecosystems and humans (*very high confidence*). Hazards and associated risks expected in the near-term include an increase in heat-related human mortality and morbidity (*high confidence*), food-borne, water-borne, and vector-borne diseases (*high confidence*), and mental health challenges (*very high confidence*), flooding in coastal and other low-lying cities and regions (*high confidence*), biodiversity loss in land, freshwater and ocean ecosystems (*medium to very high confidence*, depending on ecosystem), and a decrease in food production in some regions (*high confidence*). Cryosphere-related changes in floods, landslides, and water availability have the potential to lead to severe consequences for people,

infrastructure and the economy in most mountain regions (*high confidence*).”

IPCC Summary for Policymakers at B.2.1.

- “Climate change is a threat to human well-being and planetary health (*very high confidence*). There is a rapidly closing window of opportunity to secure a liveable and sustainable future for all (*very high confidence*).” IPCC Summary for Policymakers at C.1.
- “Without urgent, effective, and equitable mitigation and adaptation actions, climate change increasingly threatens ecosystems, biodiversity, and the livelihoods, health and wellbeing of current and future generations.” IPCC Summary for Policymakers at C.1.3.
- “Deep, rapid and sustained mitigation and accelerated implementation of adaptation actions in this decade would reduce projected losses and damages for humans and ecosystems (*very high confidence*), and deliver many co-benefits, especially for air quality and health (*high confidence*). Delayed mitigation and adaptation action would lock-in high emissions infrastructure, raise risks of stranded assets and cost-escalation, reduce feasibility, and increase losses and damages (*high confidence*).” IPCC Summary for Policymakers at C.2.
- “Accelerated climate action can also provide co-benefits (see also C.4). Many mitigation actions would have benefits for health through lower air pollution, active mobility (e.g., walking, cycling), and shifts to sustainable healthy diets. Strong, rapid and sustained reductions in methane emissions can limit near-term

warming and improve air quality by reducing global surface ozone. (*high confidence*)." IPCC Summary for Policymakers at C.2.3.

- "Human health will benefit from integrated mitigation and adaptation options that mainstream health into food, infrastructure, social protection, and water policies (*very high confidence*)." IPCC Summary for Policymakers at C.3.7.
- "Implementing both mitigation and adaptation actions together and taking trade-offs into account supports co-benefits and synergies for human health and well-being. For example, improved access to clean energy sources and technologies generate health benefits especially for women and children; electrification combined with low-GHG energy, and shifts to active mobility and public transport can enhance air quality, health, employment, and can elicit energy security and deliver equity. (*high confidence*)." IPCC Summary for Policymakers at C.4.3.

9. In short, the new IPCC Synthesis Report provides additional support, with added urgency, for our conclusion that "the State of Montana must take all steps possible to mitigate climate change before it reaches a stage beyond which interventions are futile. Reducing fossil fuel production and use and mitigating climate change now will have immediate benefits to the health of the Youth Plaintiffs now and for the rest of their lives." Rebuttal Report at 4.

Pursuant to MCA §1-6-105, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 11th day of April, 2023 in Hardin, Montana.

  
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Lori G. Byron