

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 23-0225

MONTANA ENVIRONMENTAL INFORMATION CENTER
& SIERRA CLUB,

Plaintiffs / Appellees / Cross-Appellants,

v.

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY
& NORTHWESTERN CORPORATION,

Defendants / Appellants / Cross-Appellees

and

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

Intervenor-Defendant-Appellant.

**MOTION FOR LEAVE FOR THE 16 YOUTH PLAINTIFFS IN *HELD* v.
STATE OF MONTANA TO FILE AN *AMICUS CURIAE* BRIEF IN
SUPPORT OF PLAINTIFFS-APPELLEES**

On Appeal from the Montana Thirteenth Judicial District Court
Yellowstone County, Cause No. DV 21-1307, Honorable Michael G. Moses

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Undersigned counsel for Youth *Amici* have consulted with the attorneys for all other parties in this matter regarding this motion. Counsel for MEIC and Sierra Club do not oppose Plaintiffs’ motion. Counsel for NorthWestern do not oppose Plaintiffs’ motion. Counsel for the State of Montana take no position on Plaintiffs’ motion. Counsel for DEQ do not object to Plaintiffs’ motion to file an *amicus* brief that does not address the issue of remedy, but object to the extent Plaintiffs’ *amicus* brief addresses the issue of remedy.

I. Statements of Interest of Youth *Amici Curiae*

Youth *Amici* are the sixteen Youth Plaintiffs in the constitutional climate case, *Held v. State of Montana*, No. CDV-2020-307 (Mont. First Jud. Dist. Ct. Aug. 14, 2023), on appeal to this Court, No. DA 23-0575. Youth *Amici* are now between the

ages of six and twenty-two years old and are from across the state of Montana. The Youth Plaintiffs are represented in *Held v. State of Montana* by Our Children’s Trust, McGarvey Law, and the Western Environmental Law Center.

After a seven-day trial in June 2023, the district court in *Held v. State of Montana* issued its Findings of Fact, Conclusions of Law, and Order in favor of Youth Plaintiffs (here, Youth *Amici*). Based on an extensive trial record, including ten testifying experts and fourteen fact witnesses, including twelve testifying Youth Plaintiffs, the district court declared the Montana Environmental Policy Act’s (“MEPA”) Climate Limitation, § 75-1-201(2)(a), MCA, unconstitutional and permanently enjoined its implementation. *Held v. State of Montana*, No. CDV-2020-307, Findings of Fact, Conclusions of Law, and Order, Doc. 405 at 102 (Aug. 14, 2023). The district court also declared unconstitutional and enjoined the newly enacted § 75-1-201(6)(a)(ii), MCA (2023), which aimed to preclude equitable judicial relief for MEPA violations. *Id.* The district court found that the greenhouse gas (“GHG”) emissions resulting from permits for fossil fuel activities issued by the Department of Environmental Quality (“DEQ”) and other government defendants, with no analysis of that pollution, were causing grave harms *today* to the Youth Plaintiffs’ health and well-being, and to Montana’s environment and natural resources, harms that are undisputed in the extensive trial record. *See id.* at 28, 29, 46, 69, 70, 72, 74-80, 86-87, 98-100.

Youth *Amici* have a unique and significant interest in: (1) ensuring that no new fossil fuel infrastructure—like the Laurel Generating Station gas power plant, now known as the Yellowstone County Generating Station, at issue in this appeal, which was permitted during the pendency of Youth *Amici*’s case against DEQ—is allowed to proceed given the significant harms resulting from additional GHG pollution in Montana; (2) ensuring that DEQ appropriately and consistently analyzes the environmental and human health effects of additional GHG pollution, including impacts to the climate and children, before issuing or making operable any air quality permit; and (3) alerting this Court to the need to review the constitutionality of the MEPA Climate Limitation, § 75-1-201(2)(a), MCA, in Youth *Amici*’s pending case, *Held v. State of Montana* (DA 23-0575), with the benefit of the extensive Findings and Fact and Conclusions of Law of the district court in their case.

Youth *Amici* have a unique and distinct interest in the issues presented in this case from the parties, and an *amicus* brief from Youth *Amici* will provide important context for the Court’s decision, a decision that will have significant impacts on the Youth *Amici* and other children in Montana. Among other things, Youth *Amici*’s proposed *amicus* brief addresses how youth are uniquely vulnerable and disproportionately harmed by air pollution and climate impacts resulting from the combustion of fossil fuels from powerplants such as the proposed Laurel Generating Station. Youth *Amici*’s brief will also argue for: (1) judicial recognition that the

permit issued by DEQ is *void ab initio*, (2) immediate permit vacatur on the statutory grounds adopted by the district court, or (3) at minimum a stay of the permit, pending this Court's decision on the threshold constitutional questions concerning the MEPA Climate Limitation and § 75-1-201(6)(a)(ii) fully presented in *Held v. State of Montana*, No. DA 23-0575

Counsel for Youth *Amici* have read all the briefing filed by the parties in this pending appeal and the issues covered by Youth *Amici*'s proposed *amicus* brief are not duplicative of arguments covered in any of the other briefs. Accordingly, Youth *Amici*'s unique perspective will assist the Court in deciding the statutory issues presented in Plaintiffs-Appellees' case and is not duplicative of other briefing. To the extent Youth *Amici*'s proposed *amicus* brief addresses the issue of remedy, Youth *Amici* present arguments regarding *void ab initio* not fully briefed by other parties.

Youth *Amici* are prepared to file their *amicus* brief on Tuesday November 28, 2023, or as soon as the Court rules on Plaintiffs' motion.

RESPECTFULLY SUBMITTED this 27th day of November, 2023.

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CERTIFICATE OF COMPLIANCE

Pursuant to MT. R. App. P. 16(3), I certify the above document does not exceed 1,250 words.

/s/ Barbara Chillcott
Barbara Chillcott

CERTIFICATE OF SERVICE

I, Barbara L Chillcott, hereby certify that I have served true and accurate copies of the foregoing Motion - Amicus to the following on 11-27-2023:

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