IN THE SUPREME COURT OF THE STATE OF MONTANA
CASE NO.: DA 23-0575

Rikki Held, et al.,

Plaintiffs/Appellees,

-vs-

State of Montana, et al.,

Defendants/Appellants.

On Appeal from the Montana First Judicial District Court, Lewis & Clark County
Cause No. CDV 2020-307, Hon. Kathy Seeley

# FORMER JUSTICES'*AMICUS CURIAE* BRIEF

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# TABLE OF CONTENTS

Page(s)

Table of Authorities..... i-iv

Statement of Interest.....1

Summary of Argument.....1

Argument – The MEPA Limitations Violate the Separation of Powers Clause of the Montana Constitution..... 3-19

A. The Separation of Powers Doctrine .....4

B. Montana's Separation of Powers Jurisprudence .....8

C. The Contemporary Crisis .....11

D. Restriction of Remedies .....15

E. Separation of Powers Cases in Other Jurisdictions .....17

Conclusion .....20

Certificate of Compliance .....21

# TABLE OF AUTHORITIES

## Cases

*Best v. Police Dept. of Billings*,
2000 MT 97, 299 Mont. 247, 999 P.2d 334 ..... 10

*Bowcutt v. Delta North Star Corporation*,
976 P.2d 643 (Wash. App. 1999) ..... 19

*Brown v. Gianforte*,
2021 MT 149, 404 Mont. 269, 488 P.3d 548 ..... 12, 13, 14

*City of Bourne v. Flores*,
521 U.S. 507 (1997) ..... 7, 17

*City of Norwood v. Horney*,
853 N.E.2d 1115 (Ohio 2006) ..... 18

*Conley v. Brazer*,
772 N.W.2d 545 (Neb. 2009) ..... 18

*Driscoll v. Stapleton*,
2020 MT 247, 401 Mont. 405, 473 P.3d 386 ..... 11

*Hoffman v. State*,
2014 MT 90, 374 Mont. 405, 328 P.3d 604 ..... 10

*Marbury v. Madison*,
5 U.S. (1 Cranch) 137 (1803) ..... 6, 8, 14, 15

*McLaughlin v. Montana State Legislature*,
2021 MT 178, 405 Mont. 1, 493 P.3d 980 ..... 12, 13, 14

*Metropolitan Washington Airports Authority v. Citizens for Abatement of Airport Noise, Inc.*,
501 U.S. 252 (1991) ..... 6

*Modern Barber College v. California Employment Stabilization Commission*,
192 Pac. 2d 916 (Cal. 1948) ..... 19

*Montana Environmental Information Center v. Dept. of Environmental Quality*,
1999 MT 248, 296 Mont. 207, 988 P.2d 1236 ..... 4

*Park County Environmental Council v. Montana Dept. of Environmental Quality*,
2020 MT 303, 402 Mont. 168, 477 P.3d 288 ..... 15, 16, 17

*Petroleum Tank Release Compen. Bd. v. Crumleys, Inc*.,
2008 MT 2, 341 Mont. 33, 174 P.3d 948 ..... 10

*Plaut v. Spendthrift Farm, Inc.*,
514 U.S. 211 (1995) ..... 7

*Smothers v. Lewis*,
672 S.W.2d 62 (Ky. 1984) ..... 18

*Saltonstall v. City of Sacramento*,
231 Cal. App. 3d 342 (2014) ..... 19

*The Veto Case: Mills v. Porter, State Auditor*,
69 Mont. 325, 222 P. 428 (1924) ..... 8, 9

*Tipton v. Mitchell*,
97 Mont. 420, 35 P.2d 110 (1934) ..... 9

*Worcester v. Georgia*,
31 U.S. (6 Pet.) 515 (1832) ..... 14

## Statutes and Rules

### Montana Constitution

Mont. Const., Art. II, §3 ..... 16

Mont. Const., Art. III, §1 ..... 10

Mont. Const., Art. IV, § 1 (1889) ..... 8

Mont. Const., Art. VII, §4 ..... 15

Mont. Const., Art. IX, §1 ..... 16

**Montana Code Annotated**

§ 25-1-201 (6)(a)(ii), MCA ..... 15

§ 75-1-201(6), MCA (2019) ..... 16

**United States Constitution**

U.S. Const., Art. 4, § 4 ..... 9

**Other Authorities**

The Federalist No. 47 (Benjamin F. Wright Ed. 2002) (J. Madison) ..... 5

The Federalist No. 48 (Benjamin F. Wright Ed. 2002) (J. Madison) ..... 5

The Federalist No. 48 (J. Cooke Ed. 2002) (J. Madison) ..... 6

The Federalist No. 78 (Benjamin F. Wright Ed. 2002) (A. Hamilton) ..... 5

Jefferson's *Notes on the State of Virginia* ..... 7

*Lincoln's First Inaugural Address* ..... 7

## STATEMENT OF INTEREST

The amici curiae listed below are six retired justices of the Montana Supreme Court. Collectively, they have more than eighty-five years of experience on the Court. They speak as amici curiae from concern for our constitutional system of government.

The former justices who join this amicus brief and their tenure on the Montana Supreme Court are as follows:

Terry N. Trieweiler
(Justice, Montana Supreme Court, 1990 to 2003)

James C. Nelson
(Justice, Montana Supreme Court, 1993 to 2013)

William Leaphart
(Justice, Montana Supreme Court, 1995 to 2010)

James M. Regnier
(Justice, Montana Supreme Court, 1997 to 2004)

Patricia O. Cotter
(Justice, Montana Supreme Court, 2001 to 2016)

Michael Wheat
(Justice, Montana Supreme Court, 2010 to 2017)

## SUMMARY OF ARGUMENT

The former justices take no position on the merits of this case, insofar as the merits turn upon scientific evidence of record. Their concern is institutional. It

involves the power of Montana's courts to interpret our constitution and to remedy violations of law by the executive or the legislative branches.

The separation of powers principle secures our republican form of government. It is well established in Montana jurisprudence. In recent years, however, repeated attempts have been made to abridge long-settled elements of the judicial power.

The present case involves another such attempt. Statutes at issue purport to forbid injunctions and other fundamental judicial remedies for constitutional violations. The partisan branches of our government seek to bar the judicial branch from enforcing constitutional rights.

The State's Opening Briefs argue the GHG emissions prohibition and the prohibition on injunctive remedies are political decisions, left to the legislative and executive branches. (Agency/Governor Br. p.10, p.38; State of MT Br. pp.22-23, 28). They further argue, under the separation of powers doctrine, the judiciary has no authority to weigh in on issues of policy that are directly the province of the legislature and executive branches agencies. (Agency/Governor Br. p.38).

The Agencies' arguments fail to assess what the separation of powers doctrine actually entails. Additionally, the issues raised in the Agencies' Brief raise neither political nor theoretical questions that are ostensibly best left to the legislative or executive branches.

The trial evidentiary record establishes the harms suffered by the plaintiffs. The State offered no countervailing evidence at trial. The standard of review leaves to the trial judge who heard the witnesses' testimony, adjudged each witness's credibility, and who reviewed the documentary evidence, the responsibility to make findings of fact. The appellate court is obliged to give deference to the trial court's findings on all properly admitted evidence.

Certain policy decisions are entrusted to the legislative and executive branches. However, whether those policy decisions (by commission or omission) violate the clear and unambiguous provisions of the Constitution, are clearly within the powers held exclusively by the judicial branch.

The former justices write in support of a holding that vindicates the separation of powers and the well-settled powers of the judicial branch. The judicial prerogative to interpret and enforce the constitution is vital to the rule of law.

## ARGUMENT

## THE MEPA LIMITATIONS VIOLATE THE SEPARATION OF POWERS CLAUSE OF THE MONTANA CONSTITUTION.

This case turns on legislation passed by the 2023 Montana Legislature and signed into law by the Governor. The legislation (HB 971 and SB 557) amends the Montana Environmental Policy Act (MEPA). The District Court refers to these

amendments collectively as the "MEPA Limitations."

The Limitations prohibit consideration of greenhouse gases in MEPA-mandated environmental reviews. They also prohibit courts from vacating, voiding, or delaying agency decisions based in whole or in part on inadequate agency review of greenhouse gas emissions.

The purported bar to judicial action raises a separation of powers issue. The Plaintiffs claim that greenhouse gases violate Montanans' constitutional right to "a clean and healthful environment." If this claim is established, excluding judicial remedies effectively nullifies that right.

The nullification is particularly egregious because the right in issue is a fundamental right. It is the first right listed in Section 3 of the Declaration of Rights of our constitution. Legislation impairing it is to be strictly scrutinized by the courts. See *Montana Environmental Information Center v. Dept. of Environmental Quality*, 1999 MT 248, ¶¶ 63-64, 296 Mont. 207, 988 P.2d 1236.

The District Court held the purported bar to judicial action unconstitutional. The Former Justices ask this Court to affirm that holding. The Court should emphatically stress the centrality of separation of powers to our republican form of government and to the rule of law.

### A. The Separation of Powers Doctrine

American constitutionalism rests on the doctrine of separation of powers.

The doctrine repeatedly is emphasized in *The Federalist Papers*.

James Madison warned: "The accumulation of all powers legislative, executive and judicial in the same hands … [is] the very definition of tyranny." *The Federalist* No. 47, p. 336 (Benjamin F. Wright Ed. 2002). He addressed this warning at all concentrations of power, "whether of one, a few or many, and whether hereditary, self-appointed, or elective." Id.

Madison specifically warned of "legislative usurpations, which by assembling all power in the same hands, must lead to the same tyranny as is threatened by executive usurpations." Id., No. 48, p. 344. He cited the experience of legislatures "drawing all power into [their] impetuous vortex." Id., p. 343.

Alexander Hamilton took up this theme at greater length in *The Federalist* No. 78. He argued:

> [T]he courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body.

Id., p. 492 (emphasis added).

Hamilton amplified this doctrine, laying great stress on the duty of the courts to act as a check on the legislature. He warned:

> The complete independence of the courts of justice is peculiarly

> essential to a limited Constitution. By a limited Constitution, I understand one which contains certain specified exceptions to the legislative authority; such, for instance, is that it shall pass no bills of attainder, no ex-post-facto laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of the courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.

Id., p. 491 (emphasis added).

Similar reasoning was set out authoritatively in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803). Chief Justice John Marshall held: "It is emphatically the province and duty of the judicial department to say what the law is." Id. at 177. Especially, determining whether laws are constitutional "is of the very essence of judicial duty." Id. at 178.

To hold otherwise, Marshall said, "would subvert the very foundation of all written constitutions." Id. "It would be giving to the legislature a practical and real omnipotence, with the same breath which professes to restrict their powers within narrow limits." Id.

Thus, separation of powers has been a foundational principle from the very earliest years of the republic. It has been stressed repeatedly in subsequent holdings of the U.S. Supreme Court. See, e.g., *Metropolitan Washington Airports Authority v. Citizens for Abatement of Airport Noise, Inc.*, 501 U.S. 252, 272-73 (1991) (citing Madison in *Federalist* No. 48 on "the danger from legislative usurpations");

*Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 217-18 (1995) (invalidating legislation that required courts to exercise "[t]he judicial Power … in a manner repugnant to the text, structure, and tradition of Article III").

*Plaut* comprehensively reviewed the historical background and genesis of the separation of powers doctrine. It observed that "[t]he framers of our Constitution lived among the ruins of a system of intermingled legislative and judicial powers." Id. at 219. Colonial legislatures had "functioned as courts of equity of last resort" and "[t]he vigorous, indeed often radical, populism" with which they wielded judicial power alarmed and influenced the Framers. See id. at 219-21. Thus:

> The sense of a sharp necessity to separate the legislative from the judicial power prompted by the crescendo of legislative interference with private judgments of the courts, triumphed among the Framers of the new Federal Constitution. … Before and during the debates on ratification, Madison, Jefferson, and Hamilton each wrote of the factional disorders and disarray that the system of legislative equity had produced in the years before the framing; and each thought that the separation of the legislative from the judicial power in the new Constitution would cure them.

Id. at 221 (emphasis added). *Plaut* cited *The Federalist*, Jefferson's *Notes on the State of Virginia*, Lincoln's First Inaugural Address, and diverse judicial and scholarly sources, in order to show the foundational nature of the separation of powers.

In *City of Bourne v. Flores*, 521 U.S. 507 (1997), the Court invoked the

separation of powers to invalidate the Religious Freedom Restoration Act (RFRA). It held that Congress improperly had sought to change the meaning of Constitutional rights in the guise of altering remedies. See id. at 532-36. That analysis (based on the courts' inherent power to interpret constitutions) is closely on point for the present case.

In sum, the separation of powers doctrine is deeply rooted in American history and in constitutional law. The doctrine is prominent in Montana jurisprudence, as shown below.

### B. Montana's Separation of Powers Jurisprudence

Montana's original constitution contained a strict separation of powers clause. It stated:

> The powers of the government of this state are divided into three distinct departments: The legislative, executive and judicial, and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this Constitution expressly directed or permitted.

Mont. Const., Art. IV § 1 (1889) (emphasis added).

In *The Veto Case: Mills v. Porter, State Auditor*, 69 Mont. 325, 222 P. 428 (1924), this Court robustly applied the clause:

> [T]his original and supreme will [of the people] has organized the government, and has assigned to the three different departments powers which they may not transgress. [citing *Marbury v. Madison*] The founding fathers sought to establish a system of checks and counter checks to maintain in proper poise the several departments to

> the end that neither should encroach upon the rightful powers of the other. They understood clearly the historic tendency of one department of government to usurp the functions of another. [citation omitted] The evils following the exercise of unrestrained authority, in some instances by the executive, and in others by the Parliament, were written large upon the pages of the history of England. These evils our forefathers sought to avoid by the written Constitution.

Id. at 429-430 (emphasis added).

In *Tipton v. Mitchell*, 97 Mont. 420, 35 P.2d 110 (1934), a proposed amendment to Montana's constitution would have given the Governor "well-nigh autocratic power" to set Montana's budget. Id., 35 P.2d at 115. This Court disqualified the amendment on procedural grounds. In dicta, it strenuously questioned whether the provision satisfied the separation of powers:

> The historic provision which lies at the base of a **Republican form of government**, that is to say, of a representative democracy, is declared in section 1, article 4, of the Constitution: "The powers of the government of this state are divided into three distinct departments: The legislative, executive, and judicial ….
>
> * * *
>
> It is likewise argued that the proposed amendment, affecting so many different provisions of the Constitution, as it necessarily would, might substantially change the character of our state government, and thus be contrary to the provision of the Constitution of the United States which guarantees to every state in the Union a **Republican form of government**. United States Constitution, art. 4, § 4.

Id., p. 115 (boldface by the Court).

*The Veto Case* and *Tipton* stress the paramountcy of separation of powers. They echo the conviction of Madison, Hamilton and Marshall that upholding the

doctrine is essential to republican government.

Montana's present constitution replicates the original separation of powers clause almost word for word. It states:

> The power of the government of this state is divided into three distinct branches – legislative, executive, and judicial. No person or persons charged with the exercise of power properly belonging to one branch shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.

Mont. Const., Art. III, §1.

In cases decided under the present constitution, this Court has stressed that "it is the province and duty of the judiciary 'to say what the law is.'" *Best v. Police Dept. of Billings*, 2000 MT 97, ¶ 16, 299 Mont. 247, 999 P.2d 334. See also, e.g., *Petroleum Tank Release Compen. Bd. v. Crumleys, Inc*., 2008 MT 2, ¶ 57, 341 Mont. 33, 174 P.3d 948 ("interpreting and upholding the law" is a "constitutionally designated role" of the courts); *Hoffman v. State*, 2014 MT 90, ¶ 4, 374 Mont. 405, 328 P.3d 604 ("Constitutional questions are properly decided by a judicial body, not an administrative official, under the constitutional principle of separation of powers").

In recent years, this fundamental doctrine repeatedly has come under attack. The Court forthrightly has defended the separation of powers and its own prerogative of judicial review. It should renew that institutional defense in the present case.

### C. The Contemporary Crisis

As this Court is well aware, the separation of powers principle has been acutely tested in recent years. Montana's Legislature and its executive branch have encroached aggressively on the powers and prerogatives of the judicial branch.

An initial skirmish occurred in *Driscoll v. Stapleton*, 2020 MT 247, 401 Mont. 405, 473 P.3d 386, where this Court considered a constitutional challenge to Montana's election laws. The Speaker of the Montana House of Representatives and the President of the Montana Senate filed an amicus curiae brief. They challenged the judiciary's jurisdiction. This Court held:

> In part, the Legislators' amicus brief argues that, because the United States and Montana constitutions bestow the Legislature with the exclusive duty and authority to regulate elections, the district court exceeded its authority in ruling on the issues raised.
>
> * * *
>
> Once the legislative branch has exercised its authority to enact a statute, whether through legislative referendum or a bill signed by the Governor, it is within the courts' inherent power to interpret the constitutionality of that statute when called upon to do so. A court is thus duty-bound to decide whether a statute impermissibly curtails rights the constitution guarantees.

Id., ¶ 11, n. 3 (emphasis added).

In 2022, the political branches took aggressive action and threatened a constitutional crisis. A law had been passed which abolished Montana's Judicial Nomination Commission and authorized the governor to fill vacant judgeships

with minimal prerequisites. Montana residents challenged the law as unconstitutional. See *Brown v. Gianforte*, 2021 MT 149, ¶¶ 1-11, 404 Mont. 269, 488 P.3d 548.

As the litigation progressed, the Legislature issued subpoenas to the Court Administrator and the Director of the Department of Administration. The subpoenas sought production of the Administrator's e-mails and of state-owned computers and telephones used to facilitate the polling of state judges. See *McLaughlin v. Montana State Legislature*, 2021 MT 178, ¶ 1, 405 Mont. 1, 493 P.3d 980.

The Legislature asserted that this polling constituted improper "lobbying" by members of Montana's judicial branch. It further alleged that the polling could cause judges and justices to prejudge legislation on the legality of which they later would rule. See id., ¶¶ 21, 39, 42-45.

This Court issued an order temporarily quashing the legislative subpoena to the Court Administrator, pending briefing in the matter. *Brown*, ¶ 53 (Rice, J., concurring). The Department of Justice, as counsel for the Legislature, delivered a letter to the Court stating:

> The Legislature does not recognize this Court's Order as binding and will not abide it. The Legislature will not entertain the Court's interference in the Legislature's investigation of the serious and troubling conduct of members of the Judiciary. The subpoena is valid and will be enforced.

See id. The Attorney General, on behalf of the Legislature, reiterated this position in a second letter to the Court a few days later. Id., ¶ 54.

The Legislature subsequently moved to intervene in *Brown v. Gianforte*. In doing so, the Legislature committed "to abide by and comply with all orders of the Court." See id., ¶ 63. However:

> [A]fter obtaining intervention, the Legislature reneged on its commitment, stating in its filing that what it really meant by its promise to comply with "all orders" of the Court was merely "to abide by orders that the Court has proper jurisdiction to issue" – apparently as that would be subjectively determined by someone other than this Court, perhaps by the Legislature itself or by the Department of Justice.

Id., ¶ 64 (emphasis added).

In subsequent proceedings, the Court upheld the law abolishing the Judicial Nomination Committee and allowing the Governor directly to fill vacant judgeships. *Brown*, ¶ 50. The Court, however, quashed the Legislative subpoenas, enjoined any further compliance with them, ordered the return of any materials produced, and enjoined their disclosure. *McLaughlin*, ¶¶ 55-57.

This Court thus vindicated the separation of powers doctrine and vindicated its own essential powers. Members of the Court, however, vigorously protested the overreaching acts of the political branches.

Justice Rice (who was Acting Chief Justice in *Brown*) protested the "extraconstitutional" acts of those branches, the "contemptuous" letters, and the

"improper intrusion" on the Judiciary's power. *Brown*, ¶¶ 52-55 (Rice, J., concurring). He cited *Marbury* and *The Federalist*, and he recalled Andrew Jackson's "Constitution be damned" flouting of judicial authority in *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832). Justice Rice concluded:

> While the tears of human suffering fell directly at the feet of Andrew Jackson, what is important for us today is this: "[t]hose who fail to learn from history are condemned to repeat it." And we have seen history repeated in the Attorney General's extralegal actions taken in this case.

*Brown*, ¶ 61 (Rice, J., concurring (footnote omitted)) (emphasis added).

Justice McKinnon specially concurred in *McLaughlin*, asserting that the Court should summarily have quashed the subpoenas. She would not have taken account of the Legislature's purported justifications. She stated:

> I write separately to underscore that quashing the Legislature's subpoenas is mandated by the constitutional doctrine of separation of powers. … By addressing the particulars and substance of the subpoenas … the Court implicitly lends credibility and legitimacy to a legislative act which was blatantly designed to interfere with, if not malign, a co-equal and independent branch of government.

*McLaughlin*, ¶ 58 (McKinnon, J., concurring) (emphasis added).

Justice McKinnon cited Parliament's arrogation of judicial power in seventeenth century England. She stated:

> Until today, this Country's history was quite different from seventeenth century England. Never has a legislative branch of government presumed, until today, that its investigative authority to summon witnesses and documents was unrestrained, plenary, and unreviewable by the judicial branch for violations of fundamental

> rights and privileges.

Id., ¶ 62 (emphasis added).

Justice Sandefur concurred with Justice McKinnon. He stated:

> This and the related cases are about protecting and preserving the existence and integrity of rule of law under the supreme law of this State … These cases are about the exclusive constitutional authority of the Judicial Branch to interpret the meaning and scope of constitutional rights, protections, limitations, the nature and extent of the duties and powers apportioned to each of the separate branches of government and constitutional officers thereunder, and to interpret and apply the governing law to particular factual circumstances.

Id., ¶ 81 (Sandefur, J., concurring) (emphasis added).

### D. Restriction of Remedies

*Marbury v. Madison* traced the history of judicial remedies and emphasized that the right to a remedy is "the very essence of civil liberty." 5 U.S. at 163. The MEPA Limitations defy that principle. They purport to abrogate centuries-old, fundamental judicial remedies.

The Limitations forbid the district courts to vacate, void, or delay an agency decision for inadequate review of greenhouse gases. See § 25-1-201 (6)(a)(ii). This restriction of remedies violates the plain terms of the Montana Constitution. See Mont. Const., Art. VII, § 4. ("The district court has original jurisdiction in all … cases … in equity. It may issue all writs appropriate to its jurisdiction.")

This Court struck down almost identical provisions in *Park County Environmental Council v. Montana Dept. of Environmental Quality*, 2020 MT 303,

402 Mont. 168, 477 P.3d 288. Legislative amendments to MEPA purported to forbid equitable relief for violations. Id., ¶ 53; 2011 Mont. Laws Ch. 396, § 2. The statute stated:

> (c) The remedy in any action brought for failure to comply with or for inadequate compliance with a requirement of parts 1 through 3 of this chapter is limited to remand to the agency to correct deficiencies in the environmental review conducted pursuant to subsection (1).
>
> (d) A permit, license, lease, or other authorization issued by an agency is valid and may not be enjoined, voided, nullified, revoked, modified, or suspended pending the completion of an environmental review that may be remanded by a court.

Section 75-1-201(6), MCA (2019) (emphasis added).

*Park County* reviewed the purported prohibition of remedies with reference to the guarantees of the Montana Constitution. The Constitution guarantees Montanans "a clean and healthful environment" and states, inter alia, that the Legislature "shall … provide adequate remedies to prevent unreasonable depletion and degradation of natural resources." Mont. Const., Art. II, § 3; Art. IX, § 1.

The Court held that MEPA is essential to meet these constitutional commands. *Park County*, ¶¶ 69-72, 76. The constitution requires "anticipatory and preventative" action. Id., ¶ 72. Equitable remedies are necessary to enforce the constitutional directive of preventing degradation. Id., ¶¶ 72, 76.

*Park County* governs here. This Court could simply repeat the analysis that it rendered there. The Court should go further, however, and invalidate the MEPA

Limitations on separation of powers grounds.

*Park County*'s holding is that (1) MEPA is essential to vindicate the constitution and (2) equitable remedies are essential to vindicate MEPA. This means that equitable remedies must be available to Montana's courts to rectify unlawful agency action.

*Park County* put the Legislature on notice that it cannot prohibit equitable remedies in MEPA cases. The Legislature, however, enacted just such a prohibition, replicating the prior unconstitutional clause in the MEPA Limitations. This Court emphatically should declare the clause invalid on separation of powers grounds.

The Court should also note that the Legislature's action is similar to the act of Congress which was invalidated in *City of Boerne*. Congress sought to change the meaning of the Constitution, as defined by the Court, by the expedient of changing remedies. See *City of Boerne*, 521 U.S. at 532-36. The Supreme Court held this invalid, asserting the sole right of the judicial branch to interpret the Constitution, and this Court should do the same.

**E. Separation of Powers Cases in Other Jurisdictions**

Legislatures in other states have enacted laws purporting to strip their courts of the power to grant injunctions and similar relief. Courts have invalidated such statutes, citing the separation of powers.

In *Smothers v. Lewis*, 672 S.W.2d 62 (Ky. 1984), a liquor license was revoked by a state board. A statute provided: "No court may enjoin the operation of an order of revocation … pending an appeal." See id. at 63, K.R.S. 243.580(3) (1982). The Kentucky Supreme Court upheld an injunction and held the statute unconstitutional:

> We hold that KRS 243.580(2) and (3) are unconstitutional because their prohibitions against injunctive relief pending appeal are legislative encroachments upon the powers of the judicial branch of our government.
>
> * * *
>
> In the exercise of this power, a court, when necessary in order to protect or preserve the subject matter of the jurisdiction, to protect its jurisdiction and to make its judgment effective, may grant or issue a temporary injunction in aid of or ancillary to the principal action.
>
> The control over this inherent judicial power, in this particular instance the injunction, is exclusively within the constitutional realm of the courts. As such, it is not within the purview of the legislature to shape or fashion circumstances under which this inherently judicial power may be or may not be granted or denied.

*Smothers*, 672 S.W.2d at 64 (emphasis added).

Many other cases reject attempts to restrict injunctive powers. See, e.g., *Conley v. Brazer*, 772 N.W.2d 545, 554 (Neb. 2009) ("the jurisdiction of the district court to hear suits for injunction 'cannot be legislatively limited or controlled'"); *City of Norwood v. Horney*, 853 N.E.2d 1115, ¶¶ 113-124 (Ohio 2006) ("blanket prescription on stays or injunctions … is an unconstitutional

encroachment on the judiciary's constitutional and inherent authority in violation of the separation-of-powers doctrine … inherent equitable power, derived from the historic power of equity courts, cannot be taken away or abridged by the legislature"); *Bowcutt v. Delta North Star Corporation*, 976 P.2d 643, 647 (Wash. App. 1999) ("The writ of injunction is 'the strong arm of equity.' So any legislation that diminishes the superior court's constitutional injunctive powers is void").

Some courts allow abridgement of remedies where new laws limit statutory rights. But they will not permit such abridgement where constitutional rights are at issue. Thus, e.g.:

> The Legislature cannot abridge the prerogative of the courts to grant an injunction to protect a party's constitutional right. …
>
> Under these principles, legislative additions and subtractions of statutory rights do not violate the California Constitution's doctrine of separation of powers unless the new laws have the effect of materially impairing the core function of a co-equal branch.

*Saltonstall v. City of Sacramento*, 231 Cal. App. 3d 342 (2014), citing *Modern Barber College v. California Employment Stabilization Commission*, 192 Pac. 2d 916 (Cal. 1948).

In the present case, constitutional rights are at issue. The Legislature's attempt to abridge injunctive remedies "impair[s] the core function of a co-equal branch." Id. Thus, out-of-state jurisprudence militates decisively for striking down the MEPA Limitations on separation-of-powers grounds.

## CONCLUSION

The former justices of the Montana Supreme Court take no position on the evidentiary issues which are contested on this appeal. However, they are profoundly concerned to uphold the separation of powers doctrine essential to republican government. They ask the Court to strike down the MEPA Limitations which purport to limit equitable remedies for violations of constitutional rights.

Respectfully submitted this 13th day of March 2024.

/s/Lawrence A. Anderson
Lawrence A. Anderson

## CERTIFICATE OF COMPLAINCE

Pursuant to Rule 11(4)(e) of the Montana Rules of Appellate Procedure, I certify that the foregoing Former Justices' *Amicus Curiae* Brief is printed with a proportionally spaced Times New Roman typeface of 14 point; is double spaced; and the word count calculated by Microsoft Word is 4450, exclusive of the Table of Contents, Table of Authorities, and Certificate of Compliance.

/s/Lawrence A. Anderson
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## CERTIFICATE OF SERVICE

I, Lawrence A. Anderson, hereby certify that I have served true and accurate copies of the foregoing Brief - Amicus to the following on 03-13-2024:

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Electronically signed by Treacie Burback on behalf of Lawrence A. Anderson
Dated: 03-13-2024