

IN THE SUPREME COURT OF THE STATE OF MONTANA
Cause No. DA 23-0575

RIKKI HELD, ET AL.,

Plaintiffs and Appellees,

v.

THE STATE OF MONTANA, ET AL.,

Defendants and Appellants.

On Appeal from The Montana First Judicial District Court,
Lewis And Clark County, Cause No. DDV-2020-307
The Honorable Kathy Seeley, Presiding

BRIEF *AMICI CURIAE* OF ENVIRONMENTAL AND CONSTITUTIONAL
LAW PROFESSORS IN SUPPORT OF PLAINTIFFS/APPELLEES

[Appearances on next page.]

APPEARANCES

James H. Goetz (local counsel)
GOETZ, GEDDES & GARDNER, P.C.
35 North Grand Ave.
P.O. Box 6580
Bozeman, MT 59771-6580
Ph: 406-587-0618
Email: jim@goetzlawfirm.com

James R. May, Esq.
Distinguished Professor of Law
Widener University Delaware
Law School
Ph: 302-477-2060
Email: jrmay@widener.edu

Attorneys For *Amici Curiae* Law Professors

On brief:
AUSTIN M. ANDERSON & JACK GARVEY
J.D. Candidates
Widener University Delaware Law School

Additional Counsel Information

Roger Sullivan
Dustin Leftridge
MCGARVEY LAW
345 1st Avenue East
Kalispell, MT 59901
Telephone: (406) 752-5566
rsullivan@mcgarveylaw.com
dlefridge@mcgarveylaw.com

Melissa Hornbein
Barbara Chillcott
WESTERN ENV'TL. LAW CENTER
103 Reeder's Alley
Helena, MT 59601
Telephone: (406) 708-3058
hornbein@westernlaw.org
chillcott@westernlaw.org

Nathan Bellinger (*pro hac vice*)
Andrea Rodgers (*pro hac vice*)
Julia Olson (*pro hac vice*)
OUR CHILDREN'S TRUST
1216 Lincoln Street
Eugene, OR 97401
Telephone: (413) 687-1668
nate@ourchildrenstrust.org
andrea@ourchildrenstrust.org
julia@ourchildrenstrust.org

Philip L. Gregory (*pro hac vice*)
GREGORY LAW GROUP
1250 Godetia Drive
Redwood City, CA 94062
Telephone: (650) 278-2957
pgregory@gregorylawgroup.com

Attorneys for Plaintiffs/Appellees

Dale Schowengerdt
LANDMARK LAW PLLC
7 West 6th Avenue, Suite 518
Helena, MT 59601
Telephone: (406) 457-5496
dale@landmarklawpllc.com

Lee M. McKenna
MONTANA DEQ
PO Box 200901
Helena, MT 59620-0901
Telephone: (406) 444-6559
lee.mckenna@mt.gov

Attorneys for Appellants/Defendants Governor Gianforte, Dept. of Environ.
Quality, Dept. of Natural Resources and Cons., and Montana Dept. of
Transportation

Austin Knudsen
Michael D. Russell
Thane Johnson
Assistant Attorneys General
MONTANA DEPT. OF JUSTICE
PO Box 201401
Helena, MT 59620-1401
Telephone: (406) 444-2026
michael.russell@mt.gov
thane.johnson@mt.gov
Selena Z. Sauer
CROWLEY FLECK, PLLP
PO Box 759
Kalispell, MT 59903-0759
Telephone: (406) 752-6644
ssauer@crowleyfleck.com

Mark L. Stermitz
CROWLEY FLECK, PLLC
305 S. 4th Street E., Suite 100
Missoula, MT 59801-2701
Telephone: (406) 523-3600
mstermitz@crowleyfleck.com
Emily Jones
Special Assistant Attorney General
JONES LAW FIRM
115 N. Broadway, Suite 410
Billings, MT 59101
Telephone: (406) 384-7990
emily@joneslawmt.com

Attorneys for Defendant/Appellant State of Montana

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INTEREST OF THE AMICUS CURIAE

Amicus curiae comprise a group of nationally and internationally recognized experts on environmental and constitutional law who bring a broad spectrum of legal insight into the issues of climate change, constitutional law, and related legal issues. A signatories list follows.

STATEMENT OF THE CASE

This case concerns whether the Montana Constitution protects the right to a life-sustaining climate. Based on constitutional text, controlling cases from Montana, and persuasive jurisprudence involving similar text from elsewhere, amici law professors say the answer is yes and thus that the Supreme Court should affirm the District Court’s decision that the Montana Constitution’s right to a healthy environment and right to dignity grant a vindicable right to a life-sustaining climate.

Enacted in 1972, the Montana Constitution provides that “All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment . . .” Mont. Const. art. II, § 3. It requires that “[t]he state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.” Mont. Const. art. IX, § 1(1). Further, it requires that the Legislature provide “adequate remedies for the protection of

the environmental life support system from degradation” and “to prevent unreasonable depletion and degradation of natural resources.” Mont. Const. art. IX, § 1(3). The Montana Constitution also recognizes that “[t]he dignity of the human being is inviolable. No person shall be denied the equal protection of the laws.” Mont. Const. art. II, 4.

Montana is responsible for a disproportionate portion of greenhouse gas emissions, and with it, climate change. In the Court’s words, “Montana is a major emitter of GHG emissions in the world in absolute terms, in per person terms, and historically.” *Held v. Montana*, Cause No. CDV-2020-307, Montana 1st Judicial District, 2023 WL 5229257 (Mont. Dist. Aug. 14, 2023). (Doc. 405) at ¶ 222. Extraction accounts for 70 million tons of CO₂ being released into the atmosphere annually, more than many other countries, including Brazil, Japan, Mexico, Spain, and the United Kingdom. *Id.* at ¶ 215. Transportation and processing accounts for another 80 million tons of CO₂ annually, about the same as Colombia, which has 50 times more people. *Id.* at ¶ 217. Consumption accounts for another 32 million tons of CO₂, *Id.* at ¶ 218, more per capita than all but five states. *Id.* at ¶ 220. In all, Montana is responsible for about 166 million tons of CO₂ emissions annually, *Id.* at ¶ 218, roughly the same as Argentina (with forty-seven million residents), the

Netherlands (with eighteen million residents), or Pakistan (with 248 million residents). *Id.* at ¶ 219.

The climate crisis has profound effects on the State of Montana, and with it, pushes constitutional envelopes. The District Court found that annual “extreme heat days” (temperatures of more than 90 degrees) in Montana are expected to increase by 11 - 30 days by midcentury. *Id.* at ¶ 96. Montana is expected to experience 5.6°F to 9.8°F of warming by 2100. *Id.* at ¶ 97. This will reduce snowpack and shorten snowpack runoff duration in the spring and summer, *Id.* at ¶ 148, and melt the glaciers in famed Glacier National Park, affecting water sources throughout the state, region and the Continent. *Id.* at ¶ 152-54.

This has already resulted in myriad adverse effects in Montana. Summer streamflow in Montana’s rivers has decreased by approximately 20 percent since the 1960’s. *Id.* at ¶ 170. Stream temperatures have increased between 1-2°C. *Id.* Montana’s fire season is two months longer than a generation ago, due to declining snowpack, early spring snowmelt, decreased summer precipitation, and warmer temperatures. *Id.* at ¶ 183. In the District Court’s words, *Id.* at ¶ 193:

The science is clear that there are catastrophic harms to the natural environment of Montana and Plaintiffs and future generations of the State due to anthropogenic climate change. The degradation to Montana’s environment, and the resulting harm to Plaintiffs, will worsen if the State continues ignoring GHG emissions and climate change.

Youth Plaintiffs commenced this action in March 2020, arguing that the Montana Environmental Policy Act's (MEPA) exclusion of consideration by state agencies of the causes or effects of greenhouse gases contravenes the "right to a clean and healthful environment," the right to dignity, and other rights guaranteed by the State's constitution. Complaint at 90-102 (Doc. 1); *see also, Held v. Montana*, Cause No. CDV-2020-307, Montana 1st Judicial District, 2023 WL 5229257 (Mont. Dist. Aug. 14, 2023). (Doc. 405) ("Defendants are. . . unconstitutionally depleting and degrading Montana's environment and natural resources . . . destabiliz[ing] the climate system . . . depriving the Young Plaintiffs of their constitutionally guaranteed rights under the Montana Constitution Article II, Sectio[n] 3. . . and Article IX, Section 1; . . . [Defendant's] continue to violate the fundamental rights of Youth Plaintiff to individual dignity under Article II, Section 4 . . ."). The Court allowed Plaintiffs' MEPA claims to proceed to trial. Doc. 405 at 8 (" . . . [denying] Defendants' motion for summary judgment").

The State moved to dismiss the case and/or claims within it, including challenging justiciability, standing, whether the "right to a clean and healthful environment" is self-executing and actionable, and remedies. *Id.* at 3, 8. The court denied most of the State's motions, found the Plaintiffs' claims to be

constitutionally cognizable, and set a trial date. *Id.* at 8. The State then filed emergency petitions to stop the case from proceeding, which this Court denied. *Id.*

The State then argued that a last-minute amendment to MEPA “to explicitly prohibit the State from considering greenhouse gases in MEPA decisions” mooted Plaintiffs’ claims. The District Court rejected this approach too, holding: “Based on the plain language of the implicated constitutional provisions, the intent of the Framers, and Montana Supreme Court precedent, it would not be absurd to find that a life-sustaining climate system is included in the ‘clean and healthful environment’ and ‘environmental life-support system’ contemplated by the Framers.” *Id.* at 2, 17, 25.

At trial Plaintiffs demonstrated how climate change is harming current and future generations of Montanans, *Id.* at 46 (“... science is clear there are catastrophic harms ... due to climate change”) and how the State’s complicity is making things worse. *Id.* (“degradation ... and resulting harm. . . will continue to worsen if the State continues ignoring GHG emissions and climate change”).

Based on the evidence adduced at trial the District Court held that that the State of Montana indeed violated Plaintiffs’ “right to a clean and healthful environment,” and the “inviolable” right to dignity enshrined in the Montana Constitution. *Id.* at 86, 102. Specifically, the District Court concluded that the

MEPA limitation violates the Plaintiffs’ rights to a clean and healthful environment, and that a clean and healthful environment is necessary for Plaintiffs to enjoy their right to dignity, among other rights. Mont. Const. art. II, §3-4, art. IX, §1; Doc 405 at 92-98 (“climate is included in the ‘clean and healthful environment’ and ‘environmental life support system’”). The Defendants’ appeal to the Montana Supreme Court followed.

STANDARD OF REVIEW

The Montana Supreme Court reviews a District Court’s conclusion of law and interpretations of the Constitution *de novo* for “correctness.” *City of Missoula v. Girard*, 2013 MT 168, ¶10, 370 Mont. 443, 303 P.3d 1283; *Mont. Digital, LLC v. Trinity Lutheran Church*, 2013 MT 168, ¶9, 370 Mont. 443, 473 P.3d 1009 (“review the District Court’s conclusions of law for correctness”). The District Court’s findings of fact are reviewed under the clearly erroneous standard. *In re Est. of Kuralt*, 2000 MT 359, ¶14, 303 Mont. 335, 15 P.3d 931.

SUMMARY OF THE ARGUMENT

The District Court correctly held that Montana’s constitutional right to a clean and healthful environment and to dignity incorporate the right to a life-sustaining climate. Montana’s constitution is unique in both providing a right to a healthful environment, Mont. Const. art. II, § 3 (“All persons [have] the right to a

clean and healthful environment...”) and to human dignity. Mont. Const. art. II, §4 (“The dignity of the human being is inviolable”).

First, text and controlling cases show that the District Court correctly held the right to a clean and healthful environment incorporates the right to a life-sustaining climate. The Montana Constitution provides that all persons have the right to a “clean and healthful environment,” Art. II, Sec. 3, and that “the legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.” Art. IX, Sec.1. The Montana Supreme Court has ruled that the right to a healthful environment requires a climate capable of sustaining a life support system.

Second, text and controlling and persuasive caselaw shows that the District Court correctly held that the MEPA Limitation and Mont. Code. Ann. § 75-1-201(6)(a)(ii) implicates Plaintiffs’ right to dignity under Article II, Sec. 4 of the Montana Constitution. The Supreme Court of Montana has confirmed that the Montana Constitution establishes the inviolable. The right to dignity has also been used to address climate action in Puerto Rico and countries such as Nigeria, Pakistan, and Germany. Thus, the District Court correctly ruled that the right to dignity incorporates a right to a life-sustaining climate.

ARGUMENT

I. Montana’s Right to a Clean and Healthful Environment Incorporates the Right to a Life-Sustaining Climate.

There is textual and controlling support for the District Court’s determination that the “clean and healthful environment” and “environmental life support system” provisions of the Montana Constitution afford a life-sustaining climate. Doc. 405 at 102.

A. The Constitutional Provisions in Article II, Section 3 and Article IX, Section 1 Incorporate the Right to a Life-Sustaining Climate.

The Montana Constitution guarantees the right to a “clean and healthful environment” in two places. The right to a “clean and healthful environment” is an inalienable right as stated by the Constitution. Mont. Const. art. II, § 3 (“All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment...”). Furthermore, the Montana Constitution provides that the environment shall be maintained and improved for current and future generations. Mont. Const. art IX, § 1(1) (“The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations”). Lastly, the Constitution provides that there shall be remedies to protect the environment’s life support system and prevent

unreasonable destruction of this state's natural resources. Mont. Const. art IX, § 1(3) ("The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources"). The language of the Constitution draws a clear line from a healthful environment to a climate capable of sustaining human life.

B. The Supreme Court's Ruling in *Mont. Env't Info. Ctr.* Incorporates the Right to a Life-Sustaining Climate.

This Court has ruled that Article II, Section 3 and Article IX, Section 1 are to be read together. *Montana Env't Info. Ctr. v. Dep't of Env't Quality*, 1999 MT 248, ¶¶65, 296 Mont. 207, 988 P.2d 1236. The "environmental life support system" includes the air, water, and land, and is meant to be "all-encompassing." *Id.* at ¶ 67 (citing Mont. Const. Convention, Vol. IV at 1201, March 1, 1972) (quoting Delegate McNeil, "the term 'environmental life support system' is all-encompassing, including but not limited to air, water, and land; and whatever interpretation is afforded this phrase by the Legislature and courts, there is no question that it *cannot be degraded*) (emphasis added in original). The "clean and healthful environment" provisions are meant to be preventative in nature. *Id.* at ¶69 (citing Mont. Const. Convention, Vol. IV at 1205, (March 1, 1972) (quoting Delegate McNeil, [O]ur

intention was to permit no degradation from the present environment and affirmatively require enhancement of what we have now”) (emphasis in original). There is no benefit to require monetary damages if the damage to the environment is irreversible. *Id.* at ¶71 (citing Mont. Const. Convention, Vol. V at 1230, (March 1, 1972) (quoting Delegate Robinson, “[I]t does very little good to pay someone monetary damages because the air has been polluted or because the stream has been polluted if you can’t change the condition of the environment once it has been destroyed”). The intent was to make the provisions as strong as possible. *Id.* at ¶75 (citing Mont. Const. Convention, Vol. IV at 1209, (March 1, 1972) (“... agreed upon by both sides of the debate that it was the convention’s intention to adopt whatever the convention could agree was the stronger language”).

The intent of the framers of the “clean and healthful environment” provisions intended for the “environmental life-support system” to be comprehensive. If the climate is allowed to be degraded, then it would result in the destruction of Montana’s natural resources, worsen the health of its citizens, and frustrate the framer’s intent. The uncontested factual findings from the District Court show that GHG pollution and climate impacts are already significantly degrading Montana’s environment and natural resources. Doc. 405 at ¶ 140-193.

C. The Supreme Court's Ruling in *Park Cnty. Env't Council* Incorporates the Right to a Life-Sustaining Climate.

The framers took these provisions seriously. In *Park Cnty. Env't Council* this Court determined that the framers intended for these provisions to be the strongest of any state constitution. *Park Cnty. Env't Council v. Montana Dep't of Env't Quality*, 2020 MT 303, ¶61, 402 MT. 168, 477 P.3d 288 (“we determined that the framers of the Montana Constitution intended it to contain ‘the strongest environmental protection provision found in any state constitution’”). This Court also held that Article IX, Sec. 1 of the Montana Constitution protects future generations’ environmental rights while also protecting the ‘environmental life-support system’ from unreasonable destruction. *Id.* at ¶ 62 (“... while requiring ‘protection’ of the environmental life support system ‘from degradation’ and ‘prevent[ion of] unreasonable depletion and degradation’ of the state’s natural resources”). Moreover, the citizens of Montana have a right to be constitutionally free of environmental harm that contravene the constitution. *Id.* (“This forward-looking and preventative language clearly indicates that Montanans have a right not only to reactive measures after a constitutionally-proscribed environmental harm has occurred, but to be free of its occurrence in the first place”). The purpose of the forward-looking language the convention agreed upon is for the protection of future generations. Micah Drew, *To a Clean and Healthful Environment*, Mont. Free Press:

Flathead Beacon (June 5, 2023), <https://montanafreepress.org/2023/06/05/to-a-clean-and-healthy-environment/>. (Noting Jerome Cate, “Throughout the land, young people are asking us to do something about the environment [b]ecause they’re the ones that are going to have to live with it”).

Applying *Park County* here, the framers intended to create the strongest environmental protections for current and future generations. The way that maximizes fealty to the framers’ intent is to ensure that there is no “unreasonable depletion and degradation of the state’s natural resources,” and incorporate the right to a life-sustaining climate in the right to a clean and healthful environment. Accordingly, the District Court order is consistent with Montana’s constitutional jurisprudence and the intent of the framers. Doc. 405, Conclusions of Law at ¶¶ 37-59.

D. Other Jurisdictions Have Recognized the Right to a Life-Sustaining Climate, so Too Should Montana.

The Hawaii Constitution guarantees a right of conservation and protection for its natural resources for present and future generations. Haw. Const. art. 11 § 1 (“For the benefit of present and future generations, the State ... shall conserve and protect Hawaii’s natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources ...”). It requires that the State protect its natural resources for all

people, present and future. *Id.* (“All public natural resources are held in trust by the State for the benefit of the people”). The Constitution prevents the State from harming the public interest. *Matter of Hawai'i Elec. Light Co., Inc.*, 152 Haw. 352, 526 P.3d 329, 347 (2023) (Wilson, J., concurring) (citation omitted) (the Constitution “prohibits the State from taking action ‘that substantially impairs the public interest’ in a trust source”). For all natural resources to be conserved, CO₂ levels must remain below 350ppm. *Id.* at 348 (“for all other natural resources ... to be conserved for future generations ... CO₂ must be reduced to below 350ppm”). The only way to achieve that aim is a life-sustaining climate system. *Id.* (“a life-sustaining climate system is only possible if atmospheric CO₂ concentrations are limited to below 350ppm”). Hawaii’s protection for natural resources is preventative in nature. *Id.* (citation omitted) (“The public trust ‘does not remain fixed for all time, but must conform to changing needs and circumstances’”).

Thus, the District Court correctly held that the MEPA limitation violated the Plaintiffs’ right to a clean and healthful environment, which includes Montana’s climate.

II. Montana’s Constitutional Right to Dignity Incorporates a Right to a Life-Sustaining Climate.

The District Court correctly held that the MEPA Limitation and Mont. Code Ann. § 75-1-201(6)(a)(ii) are unconstitutional. The Montana constitution

recognizes the right to human dignity. Mont. Const. art. II, §4 (“The dignity of the human being is inviolable”). The Plaintiffs’ constitutional claims hinge on whether the MEPA Limitation and Mont. Code Ann. § 75-1-201(6)(a)(ii) caused unconstitutional degradation of Montana’s environment and natural resources violating Article II, Sec. 3, and Article IX, Sec. 1. Doc. 405 at 92-93 (“impossible for the Court to find that the MEPA Limitation and Mont. Code Ann. § 75-1-201(6)(a)(ii) do not violate Article II, Sec. 3 and Article IX Sec. 1, and then find [the] statutes violate . . . rights to . . . dignity”).

The Court correctly held the right to dignity incorporates a right to a stable environment, implicated by their ruling on Article II, Sec. 3, and Article IX Sec. 1. Doc. 405 at 102 (“fundamental constitutional right to a clean and healthful environment, which includes climate as part of the environmental life-support system”). The Montana constitution, Montana case law, and jurisdictions in the United States and abroad support the District Court’s conclusion.

A. Article II Section 4 of the Montana Constitution Incorporates the Right to a Life-Sustaining Climate.

Montana’s Constitution protects human dignity. Mont. Const. art. II, §4 (“The dignity of the human being is inviolable”). Dignity is inherent, equal, and inalienable. The 1972 Montana Constitutional Convention Delegates intended the right to dignity to protect future generations. Mont. Const. Convention, Vol. VIII,

Bill of Rights Proposal at 2, 4 (March 1, 1972) (“spirit [of the proposed declaration was to ensure a] more responsible government . . . constitutionally commanded never to forget that government is created solely for the welfare of the people”). They wanted Montanans to enjoy the natural beauty of Montana. Mont. Const. pmbl. (“desiring to improve the quality of life . . . for future generations”). The infringement of dignity inhibits the liberties enumerated in *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923) (“contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness”) (citations omitted).

Inherent in Montanan’s right to dignity is the right to a stable environment. An unstable environment restricts the ability of Americans to live out the freedoms proscribed to them. Erin Daly & James R. May, *Can the U.S. Constitution Encompass a Right to a Life-Sustaining Climate? (Yes, it Can.)*, UCLA Journal of Environmental Law and Policy, 39, 47 (2021) (“Government action can and does impact the stability of the climate system and the ability of American citizens to own property, . . . exercise all their other rights, . . . live full and free lives”).

The effects of climate change infringe upon the individual dignity of the Plaintiffs. Doc. 405 at 46-64; 33. (“barriers to keeping family wealth and future economic opportunities . . . [forced to] evacuate [home] . . . distress and fear . . . [and] harms their ability to participate in cultural practices”).

B. Under Montana Case Law, the Right to Dignity Incorporates the Right to a Life-Sustaining Climate.

The Supreme Court of Montana has held Article II, Sec. 4 is a fundamental, enforceable right. *Walker v. State*, 2003 MT 134, ¶74, 316 Mont. 103, 68 P.3d 872. (“rights found in Montana’s Declaration of Rights as being ‘fundamental,’ . . . significant components of liberty. . .”) (citation omitted). The Court also recognized that the right to dignity is inviolable. *Id.* at ¶82 (“dignity clause commands that the intrinsic worth and the basic humanity of persons may not be violated”). In *Walker*, the plaintiff alleged he was subject to cruel and unusual punishment while incarcerated by the State of Montana violating his right to dignity. The Court agreed with Mr. Walker. *Id.* at ¶98 (“Constitution forbids correctional practices which . . . disregard the innate dignity of human beings”).

In *Armstrong v. State*, the Montana Supreme Court ruled that a statute prohibiting physicians from performing abortions was unconstitutional. *Armstrong v. State*, 1999 MT 261, ¶75 296 Mont. 361, 989 P.2d 364 (“the core constitutional right infringed by the legislation is . . . fundamental right to individual privacy”).

The right to dignity was implicated during the Court’s analysis. *Id.* at ¶72 (“Respect for the dignity of each individual . . . demands that people have for themselves the moral right and moral responsibility to confront the most fundamental questions about the meaning and value of their own lives and the intrinsic value of life in general, answering to their own consciences and convictions”). The Court acknowledged the responsibility of protecting the right to privacy and dignity is to respect individual choices and practices. *Id.* at ¶73 (“each person’s enjoyment of these . . . rights is not without a corresponding cost . . . [rather to ‘recognize] corresponding responsibilities’”) (citing Mont. Const. art. II, §3). That responsibility does not require government to degrade that individual dignity. *Id.* at ¶74 (“the price . . . for our commitment to the values and ideals . . . is simply tolerance”).

In *Stand Up Montana v. Missoula Cnty. Pub. Sch.*, plaintiffs claimed a school district’s mandatory masking policies during the Covid-19 pandemic violated the right to dignity. *Stand Up Montana v. Missoula Cnty. Pub. Sch.*, 2022 MT 153, ¶11, 409 Mont. 330, 514 P.3d 1062. The Court disagreed with the plaintiffs because, compared to *Walker*, the plaintiffs were not deprived of any basic necessities. *Id.* at ¶18 (“living conditions on A-block constitute an affront to the inviolable right to

dignity. . .”) (citing *Walker*, 2003 MT at ¶84). While the Court disagreed with the plaintiffs, it nevertheless confirmed the right to dignity as an inviolable right.

Allowing the continued degradation and depletion of Montana’s environment is akin to disregarding the innate dignity of those who live in and enjoy that environment. As the effects of climate change persist, the living conditions of the Plaintiffs will continue to erode. Of course, the Constitutional Delegates’ intention was to not only to preserve the beauty of Montana but to enhance that beauty, which is wholly in the welfare of the Plaintiffs.

C. Puerto Rico Recognizes the Inviolable Right to Dignity that Incorporates a Right to a Life-Sustaining Climate.

Montana’s constitutional protections for dignity owes its origins in part to the Constitution of Puerto Rico. P.R. Const. art. II, §1 (“The dignity of the human being is inviolable”). The Montana Constitutional Delegates ultimately borrowed the same language for the Montana Constitution. *See* Vicki C. Jackson, Note, Constitutional Dialogue and Human Dignity: States and Transnational Constitutional Discourse. 65 Mont. L. Rev. 15, 7-9 (2004).

In Puerto Rico, the right to dignity is used to protect religious freedoms. For example, in *Hernández Lozada v. Tirado Flecha*, a Jehovah's Witnesses who was in a serious car accident, refused a blood transfusion. *Hernández Lozada v. Tirado Flecha*, 177 D.P.R. 893, *901 (2010). The District Court however ordered the blood

transfusion. The boy's estate sued claiming the ordered blood transfusion denied the deceased's right to dignity. The Puerto Rico Supreme Court agreed. *Id.* at *933 (“... the Constitution of the Commonwealth of Puerto Rico ... protect the right of people to refuse medical treatment, even if their decision entails fatal consequences for their life”).

The concurring opinion emphasizes that dignity must be protected and respected. *Id.* at *944 (Rodriguez, Assoc. J., concurring) (“[a democracy's] morality lies ... in the recognition of the dignity of the human being, the high respect [dignity] deserves and the responsibility consequently that has all the constitutional order to rest in it, protect it and defend it ... a supreme legal value”) (citation omitted).

D. The Right to Dignity is a Globally Recognized Fundamental Right and Includes the Right to a Life-Sustaining Climate.

In 1945 the United Nations Charter established that dignity is a universal and inviolable right. U.N. Charter pmbl. (“... fundamental human righ[t]. ... [recognizing the] dignity and worth of the human person”). Dignity was further engrained into the global stage under the United Nation's Universal Declaration of Human Rights. G.A. Res. 217. (III) A, Universal Declaration of Human Rights, pmbl., (Dec. 10, 1948) (“[dignity is] inherent ... equal and inalienable ... the foundation of freedom, justice and peace. ...”).

At a global level, the right to dignity includes the right to a stable environment. The Constitution of the Federal Republic of Nigeria protects the fundamental rights to life and dignity. Const. of Nigeria (1999), §33, 34. (“Every person has a right to life . . . [e]very individual is entitled to respect for the dignity of [their] person”). In 2005 the Federal High Court found the rights to life and dignity include the right to a healthy environment. *Gbemre*, (2005) FHC/B/CS/53/05 AHRLR at 151, 155 (Nigeria) (“constitutionally guaranteed fundamental rights to life and dignity of the human person . . . include[s] the right to [a] clean, poison-free, pollution free healthy environment”).

In *Gbemre*, the petitioner argued that Shell Petroleum’s gas flaring in the Niger Delta violated his rights to life and dignity. *Id.* at 152. Shell’s activities severely harmed Gbemre’s community and environment. *Id.* at 153-54. (“exposed them to increased risk of premature death, respiratory illness, asthma, and cancer . . . [emitted] carbon dioxide and methane . . . pollut[ing] their food and water . . . reduce[d] crop production . . . [caused] acid rain . . . [from] sulphur dioxide and nitrogen oxides). The court held the right to life and dignity included the right to live in a life-sustaining climate. *Id.* at 154 (“conducive for human beings to reside in for . . . development and full enjoyment of life”).

The Lahore High Court in Pakistan used Article 14 of their Constitution to address climate change. Pak. Const. chp. 1, art. 14 (“The dignity of man, subject to law, the privacy of home shall be inviolable”). In *Asghar Leghari v. Federation of Pakistan*, the petitioner urged Pakistan to adopt more concrete strategies to combat the threat of climate change. *Asghar Leghari v. Fed’n of Pak.*, W.P. No. 25501/2015 (Pak.) (2018). The court used the right to dignity to establish the Climate Change Commission (“CCC”), tasked with finding ways to steer Pakistan towards climate resilient development. *Id.* (. . . [climate change is] “no longer a distant threat”). Finding that the CCC accomplished nearly 67% of its priority items, the Court dissolved the CCC in 2018. Now, the Standing Committee on Climate Change acts as a link between the Court and the Executive to continue sustainable development and to protect the fundamental rights of the people of Pakistan. *Id.*

Similarly, in *Neubauer et al., v. Germany*, the German Constitutional Court in 2021 found that the Federal Climate Change Act (the “Act”), violates the right to dignity recognized by the German Basic Law (the Constitution of Germany). Grundgesetz (GG) (Basic Law), art. 1, §1, translation at https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html (“Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority”); Bundesverfassungsgericht (BVerfG) (Fed. Const. Ct.), Mar. 24, 2021, Case No.

BvR 2656/18/1, BvR78/20/1, BvR 9620/1, BvR 288/20, para. 60, (Ger.)

https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2021/03/rs20210324_1bvr265618en.html. The Court encouraged future legislation to be climate centered. *Id.* at para. 255.

Held v. Montana is like *Gbemre*, *Asghar Leghari*, and *Neubauer* in that climate change has had real effects on their respective communities. The courts in Nigeria, Pakistan, and Germany, all recognized that their respective constitutional rights to dignity support a constitutional claim for climate action.

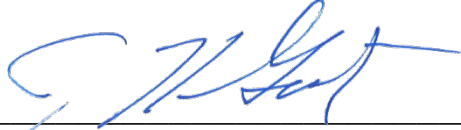
Thus, the District Court correctly held that a clean and healthful environment is necessary to protect Montana’s Article II right to dignity, which also incorporates a right to a life-sustaining climate. The Supreme Court should affirm the District Court’s decision.

CONCLUSION

For all the above reasons, the Supreme Court should affirm the District Court’s decision in full, including the conclusion that the Montana Constitution protects the right to a life-sustaining climate.

DATED this 19th day of March, 2024.

GOETZ, GEDDES & GARDNER, P.C.

A handwritten signature in blue ink, appearing to read 'J. H. Goetz', is written over a horizontal line.

James H. Goetz

APPENDIX

Amici Curiae Signatories

Randall S. Abate
Assistant Dean for Environmental Law Studies
The George Washington University Law School
2000 H Street N.W.
Washington, DC 20052
randall.abate@law.gwu.edu

Robert (Bo) Abrams
Professor of Law
Florida A & M University College of Law
201 FAMU Law Lane
Orlando, FL 32801
robert.abrams@famu.edu

Dr. Craig Anthony (Tony) Arnold
Boehl Chair in Property & Land Use
Professor of Law
Affiliated Professor of Urban & Public Affairs
Director of the Resilience Justice Project,
University of Louisville Louis D. Brandeis School of Law
Wilson W. Wyatt Hall
University of Louisville
Louisville, KY 40292
(502) 852-6388
tony.arnold@louisville.edu

Hope Babcock
Agnes William Sesquicentennial Professor of Law Emeritus
Georgetown University Law Center
600 New Jersey Ave, NW
Washington, D.C. 20001
(202) 662-9481
hope.babcock@law.georgetown.edu

Michael C. Blumm
Jeffrey Bain Faculty Scholar & Professor of Law
Lewis and Clark Law School
blumm@lclark.edu

David N. Cassuto
Professor of Law & Kerman Family Scholar
Director, Brazil-American Institute for Law & Environment (BAILE)
Elisabeth Haub School of Law at Pace University
White Plains, NY
dcassuto@law.pace.edu

Chelsea Colwyn
Adjunct Professor
Vermont Law and Graduate School
164 Chelsea Street,
P.O. Box 96,
South Royalton, VT 05068
ccolwyn@vermontlaw.edu

Erin Daly
Professor of Law and Director of the Dignity Rights Clinic
Widener University
Delaware Law School
4601 Concord Pike, Wilmington, DE 19803
edaly@widener.edu

John C. Dernbach
Professor Emeritus and Founding Director, Environmental Law and Sustainability
Center
Widener University Commonwealth Law School
3800 Vartan Way
Harrisburg, PA 17110
(717) 541-1933
jcdernbach@widener.edu

Tim Duane
Senior Fellow and Visiting Professor of Law
Wallace Stegner Center for Land, Resources & the Environment
S.J. Quinney College of Law
University of Utah
tim.duane@law.utah.edu

Burke W. Griggs
Professor of Law
Washburn University School of Law
1700 SW College Avenue
Topeka, Kansas 66621
(785) 670-1666
burke.griggs@washburn.edu

Victor B. Flatt
Coleman P. Burke Chair in Environmental Law
Associate Director, Burke Environmental Law Center
Case Western Reserve University School of Law
(713) 922-0392
vbf4@case.edu

Laura Fox
Visiting Professor
Vermont Law and Graduate School
164 Chelsea Street, P.O. Box 96
South Royalton, VT 05068
(802) 831-1292
lfox@vermontlaw.edu

Blake Hudson
Dean & Professor of Law
Cumberland School of Law
800 Lakeshore Dr.
Birmingham, AL 35229
blakehudson@samford.edu

Sam Kalen
William T. Schwartz Distinguished Professor of Law (he/him/his)
University of Wyoming College of Law
Adjunct Faculty, Haub School of the Environment & Natural Resources
Laramie, Wyoming 82071
skalen@uwyo.edu

Alicia B. Kelly
Vice Dean & Distinguished Professor of Law
Co-Director Family Health Law & Policy Institute
Widener University
Delaware Law School
4601 Concord Pike, Wilmington, DE 19803
302-477-2185
abkelly@widener.edu

Kenneth T. Kristl
Professor of Law & Director
Environmental & Natural Resources Law Clinic
Widener University Delaware Law School
4601 Concord Pike, Wilmington, DE 19803
(302) 477-2053
ktkristl@widener.edu

Katrina Fischer Kuh
Haub Distinguished Professor of Environmental Law
Elisabeth Haub School of Law at Pace University
78 North Broadway
White Plains, NY 10603
(914) 422-4000
kkuh@law.pace.edu

Douglas A. Kysar
Joseph M. Field '55 Professor of Law
Yale Law School
127 Wall Street
New Haven, CT 06511

(203) 436-8970
douglas.kysar@yale.edu

Yanmei Lin
Professor of Law
Vermont Law and Graduate School
ylin@vermontlaw.edu

Ryke Longest
John H. Adams Clinical Professor of Law
Duke University School of Law
210 Science Drive
Durham, NC 27708
(919) 613-7207
longest@law.duke.edu

Sean Lyness
Assistant Professor of Law
New England Law Boston
154 Stuart St
Boston, MA 02116
(617) 422-7377
Slyness@nesl.edu

Daniel Magraw
Senior Fellow, Foreign Policy Institute
Johns Hopkins University School of Advanced International Studies (SIS)
8564 Horseshoe Lane
Potomac, Md 20854
(202) 262-5197
damgraw@gmail.com

Anna A. Mance
Assistant Professor of Law
SMU Dedman School of Law School
3315 Daniel Ave.
Dallas, TX 75205
amance@smu.edu

Errol Meidinger, JD PhD
SUNY Distinguished Professor Emeritus
Margaret W. Wong Professor of Law Emeritus
University at Buffalo School of Law
The State University of New York
Buffalo, NY 141260-1100
eemeid@buffalo.edu

Anthony Moffa
Professor of Law
University of Maine School of Law
300 Fore Street
Portland, ME 04101
anthony.moffa@maine.edu

Camille Pannu
Associate Clinical Professor of Law and Director, Environmental and Climate
Justice Clinic
Columbia Law School
435 W. 116th Street
New York, NY 10027
(212) 854-4635
cpannu@law.columbia.edu

Patrick Parenteau
Professor of Law Emeritus and Senior Fellow for Climate Policy
Vermont Law and Graduate School
164 Chelsea Street, P.O. Box 96, South Royalton, VT 05068
(802) 831-1305
pparenteau@vermontlaw.edu

Zygmunt J.B. Plater
Boston College Law School, professor emeritus
197 Bradford Street, Provincetown MA 02657
plater@bc.edu

Amber Polk
Assistant Professor of Law
Florida International University College of Law
apolk@fiu.edu

Ann Powers
Professor Emerita of Law
Global Center for Environmental Legal Studies
Elisabeth Haub School of Law at Pace University
(443) 837-6063
apowers@law.pace.edu

Heidi Gorovitz Robertson
Steven W Percy Distinguished Professor of Law
Cleveland State University, College of Law
2121 Euclid Ave. LB130
Cleveland, Ohio 44115
h.robertson@csuohio.edu

Jonathan Rosenbloom
Professor of Law
Albany Law School
80 New Scotland Ave
Albany, NY 12208
jrose@albanylaw.edu

Professor Irma S. Russell
Edward A. Smith/ Missouri Endowed Chair in Law, the Constitution, and Society
University of Missouri-Kansas City School of Law
500 E. 52nd Street
KC, MO 64110
(406) 235-6486/493-2139
russelli@umkc.edu

Aisha Saad
Associate Professor of Law
Georgetown University Law Center
600 New Jersey Ave NW

Washington, DC 20001
aisha.saad@georgetown.edu

Susan Lea Smith
Professor of Law
Willamette University College of Law
245 Winter St SE, Salem, OR 97301
(971) 332-6942
smiths@willamette.edu

William J. Snape, III
Professor and Assistant Dean
Director, Program on Environmental and Energy Law (PEEL)
American University, Washington College of Law
(202) 274-4443
wsnape@wcl.american.edu

Achinthi C. Vithanage
Associate Director of Environmental Law Programs and Adjunct Professor of Law
Elisabeth Haub School of Law, Pace University
78 N Broadway, White Plains, NY 10603
avithanage2@law.pace.edu

Mary Christina Wood
Philip H. Knight Professor
Faculty Director, Environmental and Natural Resources Law Center
University of Oregon School of Law
1515 Agate St. Eugene OR 97403-1221
(541) 346-3842
mwood@uoregon.edu

Sonya Ziaja, JD, MSc, PhD
Assistant Professor
University of Baltimore School of Law
1401 N. Charles Street
Baltimore, MD 21201
sziaja@ubalt.edu

CERTIFICATE OF COMPLIANCE

I certify that the attached BRIEF FOR THE PLAINTIFF-APPELLEES AS AMICUS CURIAE complies with Montana Rule of Appellate Procedure 11(4) because the amici brief is proportionately spaced using Microsoft Word 2016 in 14-point Equity Text A font and contains 4,891 words, excluding the parts of the brief excluded by the Rule.



James H. Goetz

CERTIFICATE OF SERVICE

I, James H. Goetz, hereby certify that I have served true and accurate copies of the foregoing Brief - Amicus to the following on 03-19-2024:

Nathan Bellinger (Attorney)

1216 Lincoln St

Eugene OR 97401

Representing: Badge B., Lander B., Lilian D., Ruby D., Georgianna Fischer, Kathryn Grace Gibson-Snyder, Rikki Held, Taleah Hernandez, Jeffrey K., Mika K., Nathaniel K., Eva L., Sariel Sandoval, Kian T., Olivia Vesovich, Claire Vlasses

Service Method: eService

Andrea K. Rodgers (Attorney)

3026 NW Esplanade

Seattle WA 98117

Representing: Badge B., Lander B., Lilian D., Ruby D., Georgianna Fischer, Kathryn Grace Gibson-Snyder, Rikki Held, Taleah Hernandez, Jeffrey K., Mika K., Nathaniel K., Eva L., Sariel Sandoval, Kian T., Olivia Vesovich, Claire Vlasses

Service Method: eService

Roger M. Sullivan (Attorney)

345 1st Avenue E

MT

Kalispell MT 59901

Representing: Badge B., Lander B., Lilian D., Ruby D., Georgianna Fischer, Kathryn Grace Gibson-Snyder, Rikki Held, Taleah Hernandez, Jeffrey K., Mika K., Nathaniel K., Eva L., Sariel Sandoval, Kian T., Olivia Vesovich, Claire Vlasses

Service Method: eService

Melissa Anne Hornbein (Attorney)

103 Reeder's Alley

Helena MT 59601

Representing: Badge B., Lander B., Lilian D., Ruby D., Georgianna Fischer, Kathryn Grace Gibson-Snyder, Rikki Held, Taleah Hernandez, Jeffrey K., Mika K., Nathaniel K., Eva L., Sariel Sandoval, Kian T., Olivia Vesovich, Claire Vlasses

Service Method: eService

Philip L. Gregory (Attorney)

1250 Godetia Drive

Woodside CA 94062

Representing: Badge B., Lander B., Lilian D., Ruby D., Georgianna Fischer, Kathryn Grace Gibson-Snyder, Rikki Held, Taleah Hernandez, Jeffrey K., Mika K., Nathaniel K., Eva L., Sariel Sandoval, Kian T., Olivia Vesovich, Claire Vlasses
Service Method: eService

Barbara L Chillcott (Attorney)
103 Reeder's Alley
Helena MT 59601

Representing: Badge B., Lander B., Lilian D., Ruby D., Georgianna Fischer, Kathryn Grace Gibson-Snyder, Rikki Held, Taleah Hernandez, Jeffrey K., Mika K., Nathaniel K., Eva L., Sariel Sandoval, Kian T., Olivia Vesovich, Claire Vlasses
Service Method: eService

Dustin Alan Richard Leftridge (Attorney)
345 First Avenue East
Montana
Kalispell MT 59901

Representing: Badge B., Lander B., Lilian D., Ruby D., Georgianna Fischer, Kathryn Grace Gibson-Snyder, Rikki Held, Taleah Hernandez, Jeffrey K., Mika K., Nathaniel K., Eva L., Sariel Sandoval, Kian T., Olivia Vesovich, Claire Vlasses
Service Method: eService

Michael D. Russell (Govt Attorney)
215 N Sanders
Helena MT 59620
Representing: State of Montana
Service Method: eService

Mark L. Stermitz (Attorney)
304 South 4th St. East
Suite 100
Missoula MT 59801
Representing: State of Montana
Service Method: eService

Thane P. Johnson (Govt Attorney)
215 N SANDERS ST
P.O. Box 201401
HELENA MT 59620-1401
Representing: State of Montana
Service Method: eService

Emily Jones (Attorney)
115 North Broadway
Suite 410
Billings MT 59101
Representing: State of Montana
Service Method: eService

Selena Zoe Sauer (Attorney)
1667 Whitefish Stage Rd.
#101
Kalispell MT 59901-2173
Representing: State of Montana
Service Method: eService

Dale Schowengerdt (Attorney)
7 West 6th Avenue, Suite 518
Helena MT 59601
Representing: Greg Gianforte, MT Dept Environmental Quality, Department of Natural Resources,
Billings Regional Office, MT Dept of Transportation
Service Method: eService

Lee M. McKenna (Govt Attorney)
1520 E. Sixth Ave.
HELENA MT 59601-0908
Representing: MT Dept Environmental Quality
Service Method: eService

Quentin M. Rhoades (Attorney)
430 Ryman St.
2nd Floor
Missoula MT 59802
Representing: Friends of the Court
Service Method: eService

Brian P. Thompson (Attorney)
PO Box 1697
Helena MT 59624
Representing: Treasure State Resource Association of Montana
Service Method: eService

Steven T. Wade (Attorney)
PO Box 1697
Helena MT 59624
Representing: Treasure State Resource Association of Montana
Service Method: eService

Hallee C. Frandsen (Attorney)
PO Box 1697
801 N. Last Chance Gulch, Ste. 101
Helena MT 59624
Representing: Treasure State Resource Association of Montana
Service Method: eService

Keeley Cronin (Attorney)
c/o Baker & Hostetler LLP
1801 California Street, Suite 4400

Denver CO 80202
Representing: The Frontier Institute
Service Method: eService

Lindsay Marie Thane (Attorney)
1211 SW 5th Ave
#1900
Portland OR 97204
Representing: Navajo Transitional Energy Company, LLC
Service Method: eService

Ryen L. Godwin (Attorney)
1420 Fifth Ave., Ste. 3400
Seattle WA 98101
Representing: Navajo Transitional Energy Company, LLC
Service Method: eService

Matthew Herman Dolphay (Attorney)
401 N. 31st Street, Suite 1500
P.O. Box 639
Billings MT 59103-0639
Representing: Montana Chamber of Commerce, Chamber of Commerce of The United States of America, Billings Chamber of Commerce, Helena Chamber of Commerce, Kalispell Chamber of Commerce
Service Method: eService

Frederick M. Ralph (Attorney)
125 Bank Street
Suite 600
Missoula MT 59802
Representing: Northwestern Corporation
Service Method: eService

John Kent Tabaracci (Attorney)
208 N. Montana Ave. #200
Helena MT 59601
Representing: Northwestern Corporation
Service Method: eService

Abby Jane Moscatel (Attorney)
PO Box 931
Lakeside MT 59922
Representing: Montana Senate President as Officer of the Legislature and Speaker of the House of Representatives as Officer of the Legislature
Service Method: eService

Timothy M. Bechtold (Attorney)
PO Box 7051
317 East Spruce Street

Missoula MT 59807
Representing: Public Health Experts and Doctors
Service Method: eService

Lawrence A. Anderson (Attorney)
Attorney at Law, P.C.
P.O. Box 2608
Great Falls MT 59403-2608
Representing: Former Justices
Service Method: eService

John Martin Morrison (Attorney)
401 North Last Chance Gulch
P.O. Box 557
Helena MT 59624-0557
Representing: Children's Rights Advocates
Service Method: eService

Paul J. Lawrence (Attorney)
1191 Second Avenue
Suite 2000
Seattle WA 98101
Representing: Outdoor Recreation Industry
Service Method: eService

Amanda D. Galvan (Attorney)
313 East Main Street
Bozeman MT 59715
Representing: Tribal and Conservation
Service Method: eService

Jenny Kay Harbine (Attorney)
313 E Main St
Bozeman MT 59715
Representing: Tribal and Conservation
Service Method: eService

Justin P. Stalpes (Attorney)
610 Professional Drive
Bozeman MT 59718
Representing: Trial Lawyers Association
Service Method: eService

Domenic Cossi (Attorney)
303 W. Mendenhall, Ste. 1
Bozeman MT 59715
Representing: Outdoor Athletes
Service Method: eService

Electronically signed by Myriam Quinto on behalf of James H. Goetz
Dated: 03-19-2024