

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0575

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RIKKI HELD, et al.,

*Plaintiffs / Appellees,*

v.

STATE OF MONTANA, et al.

Defendants / Appellants.

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**REVISED BRIEF OF *AMICUS CURIAE* MONTANA INTERFAITH  
POWER & LIGHT IN SUPPORT OF PLAINTIFFS-APPELLEES**

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On appeal from the Montana First Judicial District Court, Lewis and Clark County  
Cause No. CDV 2020-307, the Honorable Kathy Seeley, Presiding

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## **AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFFS-APPELLEES**

### **I. IDENTITY AND INTERESTS OF *AMICUS CURIAE* AND SUPPORTING ORGANIZATIONS<sup>1</sup>**

**Montana Interfaith Power & Light** (“MT-IPL”) is a state affiliate of the national organization Interfaith Power & Light (“IPL”), which draws from multiple faith traditions, convinced of the dignity of life and the urgency of the climate crisis. MT-IPL supports the principle of intergenerational justice, which is at the heart of this case. MT-IPL bridges the gap between Montana’s faith-committed and environmentally-aware citizens and other state and national protectors of Creation, reinforcing environmentalism as an integral part of their faith identities. *See also* Appendix 1 (supporting organizations with statements of interest). It is the collective prayer of *amicus curiae* and the supporting organizations that the Montana Supreme Court uphold the ruling at issue.

### **II. SUMMARY OF ARGUMENT**

MT-IPL believes this Court should rule in favor of the Plaintiffs-Appellees (“Youth Plaintiffs”) and affirm the trial court’s determination that Mont. Code Ann. §75-1-201(2)(a) (the “MEPA Limitation”) and Mont. Code Ann. §75-1-

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<sup>1</sup> On March 21, 2024, the Court granted MT-IPL’s Motion for Leave to File an Amicus Brief. No counsel for any party authored this brief in whole or in part, no such counsel or party made a monetary contribution this brief, and only the *amicus curiae* and their counsel made monetary contribution. In addition to counsel on the caption, Neil A.F. Popović and Melissa A. Freeling from Sheppard Mullin Richter & Hampton LLP also contributed to this brief.

201(6)(a)(ii) are unconstitutional. The most important and underlying role of government is protecting present and future generations. The 1972 Montana Constitution emphasizes the inalienable right to a clean and healthful environment, drawing heavily from the Public Trust Doctrine, and mandating the government to protect Montana's resources and people from depletion and degradation. The trial court's ruling highlights the State's ethical and spiritual obligation towards the environment and the present and future citizens and children of Montana.

### **III. ARGUMENT**

Seventeenth century philosopher John Locke espoused the belief that morality could be found in the doctrines of God-given "natural rights" that justified claims to liberty, security, and property of individuals prior to the creation of a state, and which the state must protect in order to be morally justified and stable.<sup>2</sup> Locke's theories are foundational to our principal American documents such as the Declaration of Independence, Constitution, Bill of Rights, and the writings of our Country's founders.

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<sup>2</sup> John Locke, *The Second Treatise of Government* 5-6, 70-73 (Thomas Peardon ed., Bobbs-Merrill 1952) (1690).

In 1941, President Franklin D. Roosevelt delivered his powerful speech to Congress, The Four Freedoms, proclaiming the “freedom of every person to worship God in his own way—everywhere in the world.”<sup>3</sup>

**A. Montana’s Constitution is Fundamentally Rooted in Faith and Spirituality**

The Montana Constitution stands out for many reasons, including its drafting during a historic period of high activism featuring civil rights and feminism, anti-war protests, and the emerging environmental movement.<sup>4</sup> The Constitution was drafted with a diverse group of 100 authors, including 24 lawyers, 19 women, 5 ministers, and 3 professors, as well as ranchers, farmers, and business leaders.<sup>5</sup> Within this diverse group of drafters, respect for God and spirituality was a driving force, linked directly to every Montanan’s right to enjoy the majesty of Montana’s natural environment.

During the Constitutional Convention, Delegates Mae Nan Ellingson (trial witness in this case) and Bob Campbell introduced and sponsored Delegate Proposal 59, a proposed Preamble to the Constitution, stating:

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<sup>3</sup> Franklin D. Roosevelt, Annual Message to Congress (Jan. 6, 1941), National Archives, <https://www.archives.gov/milestone-documents/president-franklin-roosevelts-annual-message-to-congress> [accessed March 14, 2024].

<sup>4</sup> Jack Tuholske, Going with the Flow: The Montana Court’s Conservative Approach to Constitutional Interpretation, 72 Mont. L. Rev. 237, 240 (2011).

<sup>5</sup> Larry M. Elison & Fritz Snyder, The Montana State Constitution: A Reference Guide, p. 11 (2001).

We, the People of Montana, instilled with the Spirit of our Creator, gathering our strength from the grandeur of our mountains and the richness of our rolling grasslands, with a reverence for the quiet beauty of our state, [w]ith the desire to live in Peace, in order to improve the quality of life and equality of opportunity for this and succeeding generations, do hereby ordain and establish this Constitution.<sup>6</sup>

Delegates expressed concern over the absence of a direct reference to “God” and advocated for unambiguous revisions. The final Preamble, passed by a vote of 91-1, states:

We the People of Montana grateful to God for the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunity and to secure the blessings of liberty for this and future generations do ordain and establish this constitution.<sup>7</sup>

The Preamble was intentionally different from other state constitutions because it expressed deep reverence and pride for the land,<sup>8</sup> including the right to a clean and healthful environment.<sup>9</sup> The delegates envisioned the Declaration of

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<sup>6</sup> Fritz Snyder & Mae Nan Ellingson, *The Lawyer-Delegates of the 1972 Montana Constitutional Convention: Their Influence and Importance*, 72 *Mont. L. Rev.* 53, 58 (2011); *Montana Constitutional Convention Proceedings (“MCCP”)*, vol. 1, at 159 (Legis. Council 1972).

<sup>7</sup> *Mont. Const. pmb.*; Snyder & Ellingson, *supra*, at 58; MCCP, *supra*, at vol. 2, 1036.

<sup>8</sup> Abigail R. Brown, *Water Justice Under the Big Sky: Locating a Human Right to Water in Montana Law*, 45 *Pub. Land & Resources L. Rev.* 41, 65 (2022); MCCP, vol. 5, 1635.

<sup>9</sup> *Mont. Const. art. II, §§ 3-4* (clean and healthful environment and individual dignity).

Rights to be the “finest, most expansive declaration of individual rights enacted by any state of the United States.”<sup>10</sup> Ellingson described the Preamble as embracing four aspirations: “an attachment to the land; a guarantee of freedom . . .; a commitment to continue striving toward an improved quality of life; and the promise of equality of opportunity.”<sup>11</sup>

The decisive inclusion of God in the Preamble of the Montana Constitution highlights the spiritual and religious lens through which the delegates expressed their reverence for Montana’s natural beauty and their obligation to protect it for present and future generations. One delegate, a Methodist minister, reportedly preached: “Praise the Lord and pass the Constitution,”<sup>12</sup> invoking the phrase to signify the convention delegates’ call for spiritual and political commitment.

Many environmental advocates, religious or not, identify God, Mother Nature, or natural law as the original creator of the Public Trust doctrine, discussed below.<sup>13</sup>

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<sup>10</sup> MCCP, *supra*, at vol. 5, 1634.

<sup>11</sup> Snyder & Ellingson, *supra*, at 58; MCCP, *supra*, at vol. 2, 1036; Elison & Snyder, *supra*, at 63; MCCP, *supra*, at vol. 7, 2627.

<sup>12</sup> Alan G. Tarr, State Constitutional Design and State Constitutional Interpretation, 72 Mont. L. Rev. 1, 9 (2011); Harry W. Fritz, The 1972 Montana Constitution in a Contemporary Context, 51 Mont. L. Rev. 270, 273 (1990).

<sup>13</sup> James L. Huffman, A Fish Out of Water: The Public Trust Doctrine in a Constitutional Democracy, 19 Env'tl. L. 527, 542 (1989).

## **B. Montana’s Duty Under the Public Trust Doctrine**

### **1. Origins of the Public Trust Doctrine**

The Public Trust Doctrine, with its ancient lineage, affirms that certain resources are inherently public. As articulated by the New Jersey Supreme Court, this principle finds roots in Roman jurisprudence, which maintained that “by the law of nature ... the air, running water, the sea, and consequently the shores of the sea [were] common to mankind.” *Matthews v. Bay Head Improvement Assn.*, 95 N.J. 306, 315-316 (N.J. 1984), quoting Justinian, Institutes 2.1.1 (T. Sandars trans., 1st Am. ed., 1876). The Roman Emperor Justinian is credited with laying the groundwork for this doctrine by declaring that certain environmental elements should be protected: “The things which are naturally everybody’s are: air, flowing water, the sea, and the sea-shore.”<sup>14</sup>

The Public Trust Doctrine mandates that government act as trustee, maintaining the quality of natural resources and protecting them from depletion by private interests or detrimental expenditure so they remain accessible for future generations. Many religious faiths incorporate this commitment in their practice and scriptures.<sup>15</sup>

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<sup>14</sup> Justinian, Caesar Flavius. *The Institutes of Justinian*, Book II, Title I, Of the Different Kind of Things. Oxford Press, 1996, at 533.

<sup>15</sup> *See* Interfaith Power & Light, *Religious Statements on Climate Change*, <https://www.interfaithpowerandlight.org/religious-statements-on-climate-change/> [accessed March 18, 2024].

For example, the final passage of the last of the ancient Hebrew Prophets may be the oldest surviving declaration emphasizing the need to protect the Earth for the sake of young and future generations (Malachai 3:20-21); and Genesis 2:15 makes clear humankind’s obligation to care for the environment in stating: “The Lord God took the man and put him in the Garden of Eden to work it and take care of it.”

His Holiness the Dalai Lama has also noted the intrinsic need to protect our environment above all else and the obligation to do so for the benefit of future generations:<sup>16</sup>

Taking care of our planet is like taking care of our houses. Since we human beings come from nature, there is no point in our going against nature, which is why I say the environment is not a matter of religion or ethics or morality. These are luxuries, since we can survive without them. But we will not survive if we continue to go against nature.

...

[A]s people alive today, we must consider future generations: a clean environment is a human right like any other. It is therefore part of our responsibility towards others to ensure that the world we pass on is as healthy, if not healthier, than when we found it.

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<sup>16</sup> Dalai Lama, A Clean Environment Is a Human Right, in *Freedom in Exile: The Autobiography of His Holiness the Dalai Lama of Tibet* 280-299 (Hodder and Stoughton, UK 1990), <https://www.dalailama.com/messages/environment/clean-environment> [accessed Mar. 18, 2024].

The duty to protect the public trust transcends politics and law, applying to humanity as a whole. To strengthen this duty, protection of the public trust is legally assigned to the State.

## **2. Montana’s Legal Mandate to Serve the Public Trust**

During the Convention, a spirited debate unfolded around Delegate Cate’s proposal to expressly integrate the Public Trust Doctrine into the Montana Constitution. Although its history in common law spans over a century, some delegates deemed the doctrine too complex and uncertain.<sup>17</sup> During deliberations regarding environmental rights under Article IX, Delegate Campbell stated: “The state shall maintain an environment which we all say we want to be clean and healthful but we’re too timid to say we want clean and healthful in there because it may cause some problems later.” This remark addressed the crucial need for environmental rights while also acknowledging the apprehension of granting the legislature excessive power—an apprehension that blocked the express incorporation of the Public Trust Doctrine in the Constitution.

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<sup>17</sup> The original public trust language suggested by Delegate Cate stated:

The State of Montana shall maintain and enhance a clean and healthful environment as a public trust. The sole beneficiary of the trust shall be the citizens of Montana, who shall have the duty to maintain and enhance the trust, and the right to protect and enforce it by appropriate legal proceedings against the trustee.

*See* MCCP, *supra*, at vol. 5, 1211.

Nonetheless, a robust public trust doctrine jurisprudence has evolved in Montana with constitutional grounding.<sup>18</sup> This Court has since applied the Public Trust Doctrine to safeguard the public's access to the natural environment. For instance, in *Curran*, the Court relied on the doctrine in affirming the public's right to use the waters and riverbed up to its high-water mark, despite passing through a private landowner's property. *Mont. Coalition for Stream Access, Inc. v. Curran*, 210 Mont. 38, 55 (1984). Shortly thereafter, in *Hildreth*, the Court again invoked the doctrine in upholding the trial court's ruling that the public has an absolute right to access the river up to the high-water mark. *Mont. Coalition for Stream Access, Inc. v. Hildreth*, 211 Mont. 29, 35-36 (1984).

In 1987, the Court in *Galt* identified Article IX, § 3 as a legal basis for Montana's Public Trust Doctrine, stating:

The public trust doctrine is found at Article IX, Section 3(3), of the Montana Constitution which provides: "All surface, underground, flood and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and subject to appropriation for beneficial uses as provided by law."

*Galt v. Mont. by and through Dept. of Fish, Wildlife & Parks*, 225 Mont. 142, 146 (1987).

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<sup>18</sup> Craig, Robin Kundis, A Comparative Guide to the Western States' Public Trust Doctrines: Public Values, Private Rights, and the Evolution Toward an Ecological Public Trust, 37 *Ecology L.Q.* 53, 58 (2010).

The holdings in *Curran*, *Hildreth*, and *Galt* confirm that the Public Trust Doctrine has its roots in common law and in Article IX, § 3(3) of Montana’s Constitution. The government, as trustee, cannot ignore climate change that is shrinking rivers and lakes and raising water temperatures, causing the loss of fish and aquatic plants. *See Held v. State*, 2023 WL 5229257, (“FOF”) 165-174. Climate change also affects the earth’s atmosphere.<sup>19</sup>

The Constitution includes numerous provisions pertaining to water resources, public access, and environmental protection, which Montana courts have recognized as relevant to the State’s public trust doctrine. *See, e.g., In re Adjudication of the Existing Rights to Use of all Water*, 311 Mont. 327, 340 (2002) (discussing connection between Constitution and public trust doctrine); Mont. Const. Art. IX, § 1 (“The state... shall maintain and improve a clean and healthful environment in Montana for present and future generations.”); “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, § 3 (“All surface, underground, flood, and atmospheric waters within the boundaries of the state are

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<sup>19</sup> *See* Gregory S. Munro, *The Public Trust Doctrine and the Montana Constitution as Legal Bases for Climate Change Litigation in Montana*, 73 Mont. L. Rev. 123, 144 (2012) (arguing protection of navigable waters must extend to atmosphere).

property of the state for the use of its people...”; Art. IX, § 4 (protection of scenic, cultural, and recreational sites); Art. IX, § 4 (preservation of right to harvest wild fish).

The government must administer the Public Trust Doctrine to prevent the widespread environmental damage caused by greenhouse gas emissions, and to carry out that responsibility, the State must reduce greenhouse gas emissions as required to protect Montana’s public trust resources. *See* FOF 89-92, 193.

**C. Montana’s Duty to Protect Vulnerable Communities from the Effects of Climate Change**

**1. Native American Rights to a Clean and Healthful Environment**

Since 1972, the Montana Supreme Court has affirmed that tribes possess reserved environmental rights for past, present, and future uses. Specifically, *Greely* established that Indian reserved water rights originate from federal law, and that state courts have a “solemn obligation to follow federal law.” *State ex rel. Greely v. Confederated Salish and Kootenai Tribes*, 219 Mont. 76, 97 (1985), citing *Winters v. United States*, 207 U.S. 564 (1908).<sup>20</sup>

Montanan Native Americans are guaranteed the constitutional right to preservation of their unique cultural heritage and integrity, which includes their

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<sup>20</sup> *See also* Fletcher, Mathew L.M, States and Their American Indian Citizens, 41 Am. Indian L. Rev. 319, 319 (2017) (“Indian people are also citizens and residents of the states in which they live. Thus, states have obligations to Indians as well.”).

sacred relationship with Mother Earth. *In re Adoption of Riffle*, 277 Mont. 388, 393 (1996), citing Mont. Const. art. X, § 1(2). The richness and diversity of Montana’s Native American cultures were directly addressed in the Convention through Article X, which discusses the preservation of Native culture within the broader context of “educational goals and duties.”<sup>21</sup> Importantly, the Bill of Rights Committee explained:

‘Culture’ was incorporated specifically to cover groups whose cultural base is distinct from mainstream Montana, especially the American Indians.<sup>22</sup>

Inherent to Native American culture is their spiritual and religious practices, many of which involve reverence for the natural environment.<sup>23</sup> *See Stately v. Indian Community School of Milwaukee*, 351 F. Supp. 2d 858, 867 (E.D. Wis. 2004) (“Despite not conforming to the same limitations as traditional western religions, Native American religions generally meet all constitutional criteria for being classified as a “religion.”). Frank Tenorio, Governor of San Felipe Pueblo

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<sup>21</sup> Rebecca Tsosie, *The Challenge of “Differentiated Citizenship”: Can State Constitutions Protect Tribal Rights?*, 64 Mont. L. Rev. 1, 17 (2003).

<sup>22</sup> MCCP, *supra*, at vol. 2, 628.

<sup>23</sup> *See* Plaintiffs/Appellees’ Answer Brief, 18-19 (Plaintiff Sariel is a member of the Confederated Salish and Koetani Tribes; Plaintiffs Ruby and Lilian are members of the Crow Nation – and climate change has adversely affected their ability to participate in spiritual and cultural activities.); FOF 107, 207.

tribe, spoke of the community values and spirituality that Native American people traditionally have associated with water:

There has been a lot said about the sacredness of our land which is our body; and the values of our culture which is our soul; but water is the blood of our tribes, and if its life-giving flow is stopped, or it is polluted, all else will die and the many thousands of years of our communal existence will come to an end.<sup>24</sup>

Native American communities form part of the larger faith-based communities, and they are equally susceptible to infringements on their religious rights. Because Native Americans are disproportionately affected by the severe impacts of climate change, they have a heightened need to participate in climate change debates to protect their right to a clean and healthful environment, and the State of Montana must reduce greenhouse gas emissions in order to protect the unique interests of Native Americans.<sup>25</sup>

## **2. Disproportionate Impact on Native American Communities**

It is well understood that environmental harm disproportionately impacts impoverished, rural communities and racial minorities, particularly Native American tribes.<sup>26</sup> As a state with a substantial American Indian population and

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<sup>24</sup> Wilkinson, Charles F., *The Headwaters of the Public Trust: Some Thoughts on the Source and Scope of the Traditional Doctrine*, 19 *Envtl. L.* 425, 430 (1989).

<sup>25</sup> *See Brown, supra*, at 47-49.

<sup>26</sup> Mumby, William C., *Trust in Local Government: How States' Legal Obligations to Protect Water Resources Can Support Local Efforts to Restrict Fracking*, 44 *Ecology L. Q.* 195, 201, 207 (2017).

large areas of Indian land, Montana is faced with unique challenges. Native Americans, who comprise 6.2% of the Montana population and about 19% of rural school enrollments, primarily reside in one of seven reservations within Montana's borders.<sup>27</sup>

These reservations are inherently rural and the communities therein are particularly vulnerable to the adverse impacts of climate change and the decline of natural resources.<sup>28</sup> For example, the High Plains Aquifer, a critical water source in Montana's arid plains regions, is depleting faster than it can replenish due to reduced rainfall and rising temperatures, exacerbating water resource strains.<sup>29</sup> Reservations in these areas, already contending with water shortages, face increasingly difficult challenges in adapting to climate change.<sup>30</sup>

Water insecurity is a significant issue for Montana's rural, low-income, and native communities due to limited access to clean, affordable drinking water. These communities are especially susceptible to the negative impacts of water

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<sup>27</sup> Lisa R. Pruitt, *Spatial Inequality as Constitutional Infirmity: Equal Protection, Child Poverty and Place*, 71 *Mont. L. Rev.* 1, 29, 41-42 (2010).

<sup>28</sup> Brown, *supra*, at 46-47.

<sup>29</sup> U.S. Global Change Research Program, *Global Climate Change Impacts in the United States* 135, 128 (Thomas R. Karl, Jerry M. Melillo, & Thomas C. Peterson eds., Cambridge U. Press 2009), <http://downloads.globalchange.gov/usimpacts/pdfs/climate-impacts-report.pdf>.

<sup>30</sup> *Id.* at 124.

scarcity as their economies often rely heavily on natural resources, such as agricultural production or ranching.<sup>31</sup>

Compelling proof adduced at trial underlies the District Court’s findings that climate change harms children, who are uniquely vulnerable to the consequences of climate change. *See* FOF at ¶¶ 100-139. Studies highlight the heightened vulnerabilities of Native American children who have a higher likelihood of low birth weight and increased infant mortality rate compared to other Montana population groups.<sup>32</sup> Given that 3% of all rural children are Native American,<sup>33</sup> the state has a critical responsibility to protect them, which includes preserving the natural resources and environment they and their families rely on for healthy and fulfilling lives. Because the State’s rural, low-income, and native communities bear the brunt of climate change’s negative impacts, the State must proactively address these challenges to fulfill its duty to protect Montana’s future.

**D. The Moral Imperative to Uphold the District Court’s Order in Support of Youth Plaintiffs**

Montana’s progressive Constitution and public trust caselaw are destined to play an integral role in climate-change litigation,<sup>34</sup> including, as here, disputes over

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<sup>31</sup> Brown, *supra*, at 3.

<sup>32</sup> Pruitt, *supra*, at 29.

<sup>33</sup> *Ibid.*

<sup>34</sup> Luis José Torres Asencio, Greening Constitutions: A Case for Judicial Enforcement of Constitutional Rights to Environmental Protection, 52 Rev.

the role of government in regulating and reducing greenhouse gas emissions. The MEPA provisions challenged are antithetical to Montana's constitutional mandates. The District Court's holding underscores the State's moral responsibility to protect the environment and the people of Montana, especially its youth.<sup>35</sup>

The foundation of the public trust doctrine lies in the government's authority to supervise and control the natural resource that is the subject of the trust. *Nat'l Audubon Soc'y v. Super. Ct. of Alpine Co.*, 33 Cal. 3d 419, 425 (1983). A trustee has the duty to protect the trust property; it may not act in its own interest or the interest of any third party, and must act with utmost good faith toward the beneficiary. *See Iverson v. Rehal*, 132 Mont. 295, 299 (1957); *Wild West Motors, Inc. v. Lingle*, 224 Mont. 76, 82 (1986). While typically the government has wide latitude to balance interests and mediate disputes between competing interests; it is far more restricted when serving as a trustee over a public resource. The State's

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Juridica U. Inter. P.R. 277, 325-332 (2017-2018) (analyzing Montana Constitution and subsequent case law as model of judicial enforcement of environmental rights).

<sup>35</sup> *See* Neil A.F. Popović, Pursuing Environmental Justice with International Human Rights and State Constitutions, 15 Stan. Env'tl. L.J. 338, 362 (1996) (discussing moral duty of states to uphold human rights, including environmental rights).

duty as trustee may forbid balancing of interests or tradeoffs that would damage or deplete the resources it is entrusted to protect.

The Montana Constitution explicitly includes the duty to maintain and improve a “clean and healthful environment ... for present and future generations.”<sup>36</sup> This Court has construed this right in relation to Article II, § 3, which confirms the right to “a clean and healthful environment.” *Mont. Env'tl. Info. Ctr. v. Dept. of Env'tl. Quality*, 296 Mont. 207, 225 (1999) (describing the two provisions as so interdependent that they must be considered and applied together). The Court has “repeatedly recognized the rights found in Montana’s Declaration of Rights as being ‘fundamental,’ meaning that these rights are significant components of liberty, any infringement of which will trigger the highest level of scrutiny, and, thus, the highest level of protection by the courts.” *Walker v. State*, 2003 MT 134, 120 (2003) (internal citations omitted).

MEPA instructs the state to evaluate the impact of any major state action on the human environment’s quality.<sup>37</sup> Enacted only a year prior to the Constitution, the drafters undoubtedly considered MEPA’s directive and its requirements when they established the fundamental right to a clean and healthful environment. The

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<sup>36</sup> Mont. Const. art. IX, § 1, cl. 1; *see also* Tuholske, *supra*, at 1 (Constitution reflects “the delegates’ intentions and [is] gradually reshaping our legal traditions.”).

<sup>37</sup> Mont. Code Ann. § 75-1-201(1)(b)(iii).

language in Article II and Article IX mirrors some of MEPA’s language, further demonstrating the delegates’ intention to frame the rights as interconnected and interdependent.<sup>38</sup> Upholding the District Court’s holding that the MEPA Limitation and Mont. Code Ann. §75-1-201(6)(a)(ii) violate the Constitution and enjoining their enforcement is critical to ensure that the State fulfills its moral and legal responsibility to ensure a clean and healthful environment for this and future generations of Montanans, and to ensure the State of Montana reduces greenhouse gas emissions as required to mitigate climate change.

#### IV. CONCLUSION

For the foregoing reasons, MY-IPL respectfully submits this brief in support of the Youth Plaintiffs.

Dated: April 3, 2024

SHEPPARD, MULLIN, RICHTER & HAMPTON  
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<sup>38</sup> Deborah B. Schmidt & Robert J. Thompson, *The Montana Constitution and the Right to a Clean and Healthful Environment*, 51 Mont. L. Rev. 411, 423-27 (1990).

## Appendix 1

### Supporting Organizations

The following organizations also submit statements of interest and support for the instant brief in support of Youth Plaintiffs:

By championing clean energy, national **Interfaith Power & Light** (“IPL”) also amplifies the voice of the faith community and those disproportionately affected by climate change. IPL inspires and mobilizes people of faith and conscience to take bold and just action on climate change, and advocates for reduced pollution and clean energy through proactive policy change at local, state, and national levels. IPL’s mission is to shape climate policies that offer both mitigation strategies and adaptation support for communities at risk, both domestically and globally. Their health, and indeed their very survival, hangs in the balance. IPL is dedicated to fostering a widespread and inclusive shift to renewable energy sources, envisioning a clean energy economy wherein everyone can participate and benefit, supporting a path to climate justice. IPL envisions a stable climate where humans live in a right and just relationship, interconnected with a healthy, thriving, natural world.

As one of 41 IPL chapters across the United States, MT-IPL is committed to the long term protection of Montana’s natural splendor now and for all future generations.

**Arizona Interfaith Power & Light** (“AZ-IPL”) is a chapter of IPL and organization of congregations across Arizona. The organization brings congregations together to care for our common home and work for climate justice. AZ-IPL and its members embrace a vision of a just and harmonious relationship with Creation for both present and future generations. The organization is committed to ending the suffering caused by climate change, including future suffering.

**Alabama Interfaith Power & Light’s** (ALIPL) mission is to be faithful stewards of Creation by responding to climate change through the promotion of environmental justice, energy conservation, energy efficiency, and renewable energy from a faith perspective. ALIPL is both a program of The People's Justice Council and a chapter of national IPL.

**New Mexico & El Paso Region Interfaith Power and Light** carries great love, care, dedication and concern for current and future generations, especially the younger generation who holds a unique perspective on the reality of a warming planet. The organization maintains that it has an ethical, moral and spiritual responsibility to all of life and strongly supports the Youth Plaintiffs who offer vision, hope and action for our Sacred Common Home.

**Iowa Interfaith Power & Light** mobilizes for climate action in the state of Iowa. Its mission is to empower Iowans of faith and conscience to take bold and

just action on the climate crisis. The organization envisions a world where all persons live in right relationship with their neighbors and the planet.

**Earth Ministry/Washington Interfaith Power & Light** (“Earth Ministry/WA IPL”) transforms faith into action for the well-being of communities and the environment. It organizes people of faith and conscience to advocate for strong environmental policies and provide strategic guidance to religious communities working toward environmental justice. Earth Ministry/WA IPL offers multifaith support for stewardship, community, collaboration, and justice across Washington state and envisions a just and sustainable future in which people of all spiritual traditions fully embrace their faith’s call to environmental stewardship.

Additional chapters of IPL, including **Vermont Interfaith Power & Light**, **North Carolina Interfaith Power & Light**, and **Nebraska Interfaith Power & Light** also support this brief.

**St. James Episcopal Church** in Lewistown, Montana has a history of protecting the environment and strongly supports the Montana Youth in this case.

**Helena Interfaith Climate Advocates** is commanded to love all people and all beings. This love compels the organization to take action to ensure a sustainable environment, now and for future generations. Helena Interfaith

Climate Advocates implores those in power to commit themselves to this principle as fundamental to their decisions.

**University Congregational Church, United Church of Christ** in Missoula, Montana is a faith community founded in 1891. As part of its faith responsibilities, the congregation has fulfilled the denominational requirements to become a Creation Justice Church and has adopted a formal covenant that governs its actions and recognizes its obligations to protect the environment that reads, in part, as follows:

Climate crisis is an urgent, all-encompassing, worldwide emergency. In affirming the divine gifts of creation and in affirming our connection to God, each other, and the world around us, we unconditionally commit ourselves as individuals and as a congregation to the intertwined responsibilities of caring for creation and seeking justice for the oppressed. With purposeful resolve, we commit ourselves with an awareness of how the abuses of creation inevitably cause human suffering and of how factors such as race, class, and global inequality inevitably cause some to suffer more than others. Furthermore, as humanity confronts the current and future crisis of damage to the climate, the Earth, and all creatures, we commit ourselves with an urgent sense of calling. We desire that these deeply felt commitments be reflected in all the dimensions of our congregation's life.

**Spokane Interfaith 350** advocates for faith-based responsibilities of individuals and government bodies to take proper care to preserve and protect the physical environment of the Earth, for the benefit of all of life, which it terms "Care for Creation." Spokane Interfaith 350's parent organization, 350 Spokane, advocates in a similar way with special attention to atmospheric carbon dioxide,

and has a broader civil society reach. The organization finds Care for Creation to be a tenet of its religious beliefs.

**Unitarian Universalist Fellowship of Bozeman** advocates for faith-based responsibilities of individuals and government bodies to take proper care to preserve and protect the physical environment of the Earth, for the benefit of all of life, which the organization terms “Care for Creation.” Its parent organization is 350 Spokane, *supra*.

**Bozeman United Methodist Church** seeks to be good stewards of God’s creation. The organization acknowledges that unsustainable human activities have placed the entirety of God’s creation in peril. Further, the degradation and wholesale destruction of the natural environment threatens unprecedented harm, bringing danger to human and nonhuman life alike. The organization is committed to the work of creation justice and seeking to live in the fullness of creation.

**St. Mark’s Episcopal Church** maintains that all of God’s creation is sacred – therefore, it stands to reason that it all needs protection and preservation, not only for the current generation but for all generations to come. In taking action to endorse the Youth Plaintiffs, St. Mark’s Episcopal Church cites Article IX(1) of the Montana State Constitution as a particular key to voicing its support.

The **Fort Benton and Highwood Community of Montana in the United Methodist Church** traces its history to the days before Montana entered the Union

when Fort Benton was the furthest inland port in the world. William Van Ordsel began the work of spreading Methodism across Montana by preaching his first sermon in one of Fort Benton's bars. Today, the organizations are united by their shared faith, a faith lived out in serving and caring for the community and creation around us from the Missouri River to the Highwood mountains. The Western Jurisdiction of the Creation Justice Movement brings together people from across the western United States in an interfaith Creation Justice network.

**Coalition on the Environment and Jewish Life** supports the protection and stewardship of our shared world, all its inhabitants, and all of God's creation. The organization stands with the Youth Plaintiffs in envisioning a world that is healthy, safe, and livable for current and future generations, and holding our legislatures accountable.

**Green Team of the Montana-Northern Wyoming Conference UCC** celebrates God's creation and seeks to honor the beauty God created. The Psalmist wrote, "The earth is the Lord's and the fullness thereof, the world and they that dwell therein." Ps. 24:1, KJV. Perhaps the Prophet Jeremiah's language speaks to us today about the beauty of Montana and how our human actions have begun to change the land and environment, "And I [God] brought you into a plentiful country, to eat the fruit thereof and the goodness thereof; but when ye entered, ye defiled my land, and made mine heritage an abomination." Jer. 2:7. As we repent

of our exploitation of the earth, we seek to restore it and nurture it, to “maintain and improve a clean and healthful environment in Montana for present and future generations.” Montana Constitution, Article IX(1).

**Episcopal Diocese of Montana** is founded in the Episcopal tradition of involvement in the right and proper use and preservation of creation. The organization has liturgies for a Season of Creation Care, of which there is a focus on a clean and healthful environment.

**St. James Parish**, as Episcopalians, believe in doing all that is possible to protect the beauty and integrity of God’s creation by whatever means necessary.

**Glacier Unitarian Universalist Fellowship** lends its support to the Youth Plaintiffs as clearly in alignment with its seventh principle, which states, “We believe in caring for our planet Earth, the home we share with all living things.”

As Christians, the people of **St. Paul’s United Methodist Church** are called to be faithful stewards of God’s Creation and to act for creation justice. The delegates to Montana’s 1972 Constitution Convention recognized the spiritual basis for creation stewardship as a covenant between God and humankind and expressed it as the mandate placed on Montana’s government to maintain and improve a clean and healthful environment, that which was the blessing bestowed by our Creator on past, current, and future generations of Montanans. Among those delegates was the Rev. George Harper, the then pastor of St. Paul’s. The St.

Paul's congregation honors the memory of Rev. Harper's faith-filled commitment to creation stewardship in this declaration of support for the Youth Plaintiffs.

**The Vestry and Rector of the Episcopal Church of the Holy Spirit, Missoula, Montana,** supports the MT-IPL brief, as it cares deeply about the welfare of future generations and fully appreciates the responsibility to care for creation.

**Emmaus Campus Ministry** supports this brief, as it pertains directly to the future livelihoods of its students. Climate change looms as a significant threat, potentially affecting various aspects of future generations' lives, including their employment, residential options, and family upbringing. From a theological perspective, Emmaus Campus Ministry interprets the issues discussed herein as an occasion to "turn [] hearts outward" and strive for a more intimate connection with God and the earth. It is Emmaus Campus Ministry's obligation, in their role as a campus ministry, to take a stand and exert maximum effort to curtail the impacts and disastrous outcomes of climate change on the landscapes of Montana.

**The Bozeman Dharma Center** ("BDC") serves as one of the few Buddhist Centers across the U.S. and represents multiple Buddhist lineages. The vision of the BDC aims at actualizing our awakened minds and compassionate hearts for the benefit of all beings. The BDC's mission is to establish a welcoming community for practicing and studying Buddhism in a contemporary world. The BDC accepts

all social identities, encompassing all races, classes, sexual orientations, gender identities, ages, abilities, cultures, and ethnicities. In line with its social consciousness, the BDC urges dharma practitioners to act in the world. Engaged Buddhism guides the BDC to take the wisdom and compassion from personal practice and commit to alleviating suffering in the world. The BDC believes this commitment directly includes addressing the climate crisis to ensure a safe and healthy world for everyone, now and in the future.

**The Social Justice team from Pilgrim UCC church** in Bozeman, Montana is dedicated to the cause of environmental justice. The organization believes that Montana’s children and grandchildren have a constitutional right to a future in a clean and safe environment.

**The People’s Justice Council** is an interfaith organization that focuses primarily on energy and climate change in its environmental justice work. The organization’s vision is to create a just world one corner at a time – a world that is equitable and regenerative, with just policies that place people and planet over profit. Its mission is to engage and equip communities with tools and access to build power from the grassroots up for change at the policy level.

**All Saints in Big Sky** – A shared ministry of the Episcopal and Lutheran (ELCA), a combined congregation of the Episcopal Church and the Evangelical Lutheran Church of America, understands the importance of the Stewardship of

God's Creation. As stewards, the organization promotes environmental justice and supports efforts to reduce the effects of climate change on the earth and its peoples.

**Big Sky Unitarian Universalist Fellowship** supports the Youth Plaintiffs and believes that the Constitution of the State of Montana should honor its commitment to a clean and healthful environment.

**St. James Episcopal Church of Dillon, Montana** has a history of involvement in its community. Through the years, the organization has helped establish and support various ministries such as the Beaverhead Food Pantry and The Community Wood-bank. Although its membership has decreased and aged, it still sees the importance of speaking out and supporting causes that it is called to do as Christians. The organization maintains that Creation care is one of the greatest concerns humanity faces. The organization cares about the world left for future generations and stands with the Montana Youth Plaintiffs who have challenged the Governor and his administration for not following the Montana State Constitution in these regards.

The congregation of **Gethsemane Episcopal Church** in Manhattan, Montana is in full support of the Youth Plaintiffs' efforts to fight for their right to a clean and healthful environment for current and future generations. The organization is concerned about the world left to the children, grandchildren, and future generations. As Christians, the organization is called to be good stewards of

and live in right relation with God's creation. The organization is also called to be like Christ and in its day-to-day lives address injustices through love and action. The organization stands alongside and in support of these young Montanans fighting for their future.

**The Creation Advocacy Network** is composed of more than 100 Montanans who believe that caring for God's creation is a matter of faith and trust in the highest being. The organization is committed to a livable environment for all now and for future generations. Today's children and their children will reap the worst of consequences unless climate warming is controlled. Government at all levels, the smallest community, and the most populated country must pledge allegiance to a livable global climate. The organization maintains that the citizens are blessed that our Montana constitution was created by those who had the vision to understand that without the strongest protections for our common environment, our lives and the lives of those who will come after us are threatened. Montana voters agreed and approved the sacred right to "our environmental life support system" that sustains the Liberty and Freedom made possible only if there is a livable climate. The organization maintains that the Youth Plaintiffs are a blessing who have taken upon themselves to ensure that their government will place the highest priority in law to curtail global warming. The organization stands with the

Montana Youth Plaintiffs and asks that the Montana Supreme Court uphold the rulings in *Held v. State of Montana*.

## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11(3)(b) and Rule 11(4)(e) of the Montana Rules of Appellate Procedure, I certify that this brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced except for footnotes and for indented material; and the word count is under 5,000 words, as calculated by Microsoft Word, excluding those sections exempted under Rule 11(4)(d).

DATED this 3rd day of April, 2024.

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