

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

RIKKI HELD, et al.,

Plaintiffs / Appellees

v.

STATE OF MONTANA, et al.,

Defendants / Appellants

**PLAINTIFFS/APPELLEES' SECOND NOTICE OF SUPPLEMENTAL
AUTHORITY**

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

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

Barbara Chillcott
Melissa Hornbein
Western Environmental Law Center
103 Reeder's Alley
Helena, MT 59601
(406) 708-3058
chillcott@westernlaw.org
hornbein@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
(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
(650) 278-2957
pgregory@gregorylawgroup.com

Attorneys for Plaintiffs / Appellees

Dale Schowengerdt
Landmark Law PLLC
7 West 6th Ave., Suite 518
Helena, MT 59601
(406) 457-5496
dale@landmarklawpllc.com

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

*Attorneys for Defendants / Appellants
Department of Environmental Quality,
Department of Natural Resources and
Conservation, Department of
Transportation, and Governor Gianforte*

Austin Knudsen
Montana Attorney General
Michael D. Russell
Thane Johnson
Montana Department of Justice
PO Box 201401
Helena, MT 59620-1401
(406) 444-2026
michael.russell@mt.gov
thane.johnson@mt.gov

Emily Jones
Special Assistant Attorney General
Jones Law Firm, PLLC
115 N. Broadway, Suite 410
Billings, MT 59101
(406) 384-7990
emily@joneslawmt.com

Mark L. Stermitz
Crowley Fleck, PLLP
305 S. 4th Street E., Suite 100
Missoula, MT 59801-2701
(406) 523-3600
mstermitz@crowleyfleck.com

Selena Z. Sauer
Crowley Fleck, PLLP
PO Box 759
Kalispell, MT 59903-0759
(406) 752-6644
ssauer@crowleyfleck.com

*Attorneys for Defendant / Appellant
State of Montana*

Plaintiffs/Appellees, pursuant to the provisions of Rule 12(6), M.R.App.P., submit this Second Notice of Supplemental Authority. Plaintiffs hereby notify the Court that its decision in *Barrett, et al v. State*, 2024 MT 86, issued April 26, 2024, six weeks *after* Plaintiffs/Appellees' Answer Brief was filed, provides supplemental authority in the case at bar and supports arguments made in Plaintiffs/Appellees' Answer Brief.

First, *Barrett* confirms that in all of its orders addressing standing the District Court in *Held v. State of Montana* applied the appropriate three-part analysis when evaluating whether Plaintiffs have constitutional standing. *Barrett*, ¶30 (*citing Heffernan*); *see* Doc. 46 at 7-19 (applying same injury, causation, and redressability standing test cited in *Barrett*); Doc. 379 at 7-14 (same); Doc. 405 at COL #4-24 (same); Pls.' Answer Br. at 15-21.

Second, *Barrett* supports the District Court's holding that Plaintiffs have constitutional standing, not only for their past and ongoing injuries, but also for injuries that are threatened. *Barrett*, ¶¶27, 33, 35, 36 (finding standing for injuries and harms that are "threatened", where there is a "credible threat" of future injury, a "forecasted injury", and for challenges to laws that have yet to be implemented); *see* Pls.' Answer Br. at 21-22; Doc. 405 at COL #6, 7, 10, 19-21.

Third, the Court in *Barrett* explained that denying standing would have immunized laws from judicial review that the State of Montana conceded were

unconstitutional. *Barrett*, ¶¶38, 42 (not appealing the constitutionality of a statute is a concession that it is unconstitutional). Here too, Defendants have conceded § 75-1-201(6)(a)(ii), MCA (the Judicial Prohibition) is unconstitutional by not appealing the District Court's holding that it is unconstitutional. Doc. 405 at COL #25-29. Therefore, denying Plaintiffs standing would immunize § 75-1-201(6)(a)(ii), MCA from review. Pls.' Answer Br. at 2 n.2; *see also Barrett*, ¶42 n.8.

Fourth, *Barrett* confirms that the Supreme Court will not consider arguments raised for the first time on appeal. *Barrett*, ¶45; *see* Agency Opening Br. at 21-22 (raising Dormant Commerce Clause arguments for the first time on appeal); State Opening Br. at 27-28 (arguing compelling interest in MEPA Limitation for the first time on appeal); Pls.' Answer Br. at 45 n.20, 67.

RESPECTFULLY SUBMITTED this 3rd day of May 2024.

/s/ Roger Sullivan

Roger Sullivan

Dustin Leftridge

McGarvey Law

345 1st Avenue East

Kalispell, MT 59901

(406) 752-5566

rsullivan@mcgarveylaw.com

dleftridge@mcgarveylaw.com

Barbara Chillcott

Melissa Hornbein

Western Environmental Law Center

103 Reeder's Alley

Helena, MT 59601

(406) 708-3058
chillcott@westernlaw.org
hornbein@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
(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
(650) 278-2957
pgregory@gregorylawgroup.com

Attorneys for Plaintiffs / Appellees

CERTIFICATE OF SERVICE

I, Roger M. Sullivan, hereby certify that I have served true and accurate copies of the foregoing Notice - Supplemental Authority to the following on 05-03-2024:

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

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 and Conservation, 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

James H. Goetz (Attorney)
PO Box 6580
Bozeman MT 59771-6580
Representing: Environmental and Constitutional Law Professors'

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: Montana Outdoor Athletes
Service Method: eService

Monte Tyler Mills (Attorney)
William H. Gates Hall

Box 353020
Seattle WA 98195-3020
Representing: Denise Juneau, Kathryn Shanley, Native Nations in Montana
Service Method: eService

Robert J. Guite (Attorney)
4 Embarcadero Center, 17th Fl
Sheppard Mullin
San Francisco CA 94111
Representing: Montana Interfaith Power and Light
Service Method: eService

Alexander H. Rate (Attorney)
713 Loch Leven Drive
Livingston MT 59047
Representing: American Civil Liberties Union, ACLU of Montana
Service Method: eService

Electronically Signed By: Roger M. Sullivan
Dated: 05-03-2024