

IN THE SUPREME COURT OF THE STATE OF MONTANA

DA 23-0575

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RIKKI HELD, ET AL.,

*Plaintiffs and Appellees,*

v.

STATE OF MONTANA, ET AL.

*Defendants and Appellants.*

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

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**APPELLANTS’ JOINT NOTICE OF SUPPLEMENTAL AUTHORITY**

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Appellants State of Montana, Governor Greg Gianforte, Department of Environmental Quality, Department of Natural Resources and Conservation, and Department of Transportation submit this joint notice of supplemental authority. Mont. R. App. 12(6). Appellants direct this Court to two recent authorities.

**I. *United States v. District Court for the District of Oregon (Juliana)*.**

On May 1, 2024, the Ninth Circuit Court of Appeals issued a writ of mandamus ordering the United States District Court for the District of Oregon to again dismiss the *Juliana v. United States* plaintiffs’ claims for lack of Article III standing. *United States v. United States Dist. Ct. for the Dist. of Oregon (Juliana)*, No. 24-684 (9th Cir. May 1, 2024).

By way of background, *Juliana v. United States* involved twenty-one youth plaintiffs’ claims that—by failing to adequately respond to the threat of climate change—the United States government violated a putative “right to a stable climate system that can sustain human life.” 947 F.3d 1159, 1175 (9th Cir. 2020); *see also*, e.g., Agency Br. 10, 26, 29, 30, 31, 33 and State Br. 7, 11, 14 (citing *Juliana*). The Ninth Circuit held that the *Juliana* plaintiffs lacked Article III standing and remanded the case to the district court with instructions to dismiss. 947 F.3d at 1169–75. On remand, the district court did not dismiss, but instead allowed the *Juliana* plaintiffs to amend their complaint and, later, denied the United States’ motion to dismiss for lack of standing. *United States v. United States Dist. Ct.*, No.

24-684, at \*2 (9th Cir. May 1, 2024). The government petitioned the Ninth Circuit for mandamus seeking to enforce the Ninth Circuit’s earlier mandate to dismiss in *Juliana*. *Id.* Observing that the federal district court flouted the “letter” and “spirit” of the Ninth Circuit’s mandate in *Juliana*, the Ninth Circuit issued mandamus and “instructed” the district court “to dismiss the case forthwith for lack of Article III standing, without leave to amend.” *United States District Court*, No. 24-684 at \*5.

The Ninth Circuit’s *United States District Court* mandamus order is relevant to this appeal for three reasons. First, it further explains the Ninth Circuit’s rationale in *Juliana*. The Ninth Circuit’s mandamus order described *Juliana*’s holding in the following way:

“In the prior appeal, we held that declaratory relief was ‘not substantially likely to mitigate the plaintiffs’ asserted concrete injuries. *Juliana*, 947 F.3d at 1170. To the contrary, it would do nothing ‘absent further court action,’ which we held was unavailable. *Id.* We then clearly explained that Article III courts could not ‘step into the[] shoes’ of the political branches to provide the relief the *Juliana* plaintiffs sought. *Id.* at 1175. Because neither the request for declaratory relief nor the request for injunctive relief was justiciable, we ‘remand[ed] th[e] case to the district court with instructions to dismiss for lack of Article III standing.’”

*Id.* at \*3; *see also* Agency Br. 29, 30–31, 33, 37, 39; State Br. 7; *cf.* Held’s Ans. Br., 51 n.22 (citing *Juliana*, 947 F.3d at 1169, 1173).

Second, the *United States District Court* order discusses the extent to which declaratory relief, alone, could redress the *Juliana* plaintiffs’ alleged climate

change injuries. *See United States Dist. Ct.*, No. 24-684 at \*3 (explaining *Juliana*'s holding that “declaratory relief was not substantially likely to mitigate the plaintiffs’ asserted concrete injuries.”) (quoting *Juliana*, 947 F.3d at 1175); *cf.* Held Ans. Br. 42–46; *see also* State Br., 4, 10, 12; Agency Br., 33–39; State Reply Br. 9–10; Agency Reply Br., 6, 13–17, 22–23.

Third, the *United States District Court* order explains that *Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 798 (2021), did not alter the *Juliana* plaintiffs’ lack of Article III standing: “*Uzuegbunam* was a damages case which says nothing about the redressability of declaratory judgments. Damages are a form of *retrospective* relief. *Buckhannon Bd. & Care Home v. W. Va. Dep’t of Health & Human Res.*, 532 U.S. 598, 608–09 (2001). Declaratory relief is *prospective*.” *Id.* at \*4 (emphasis added); *cf.* Held Ans. Br., 43 n.17 (citing *Uzuegbunam*, 141 S. Ct. at 798); *see also* Agency Reply Br. 16.

## **II. *G.B. v. EPA***

In *G.B. v. EPA*, “a group of minors residing in California” sued the EPA, claiming that certain EPA policies contributed to climate change and violated the minors’ constitutional rights. *G.B. v. EPA*, No. CV 23-10345-MWF, 2024 WL 1601807, at \*1–2 (C.D. Cal., May 8, 2024). The plaintiffs sought declaratory relief establishing that the challenged policies were unconstitutional in several ways. *Id.* at \*\*2–4.

On May 8, 2024, the federal district court held that “*Juliana* is on all fours with this action,” found that the Plaintiffs’ alleged injuries were not redressable, and dismissed the complaint for lack of Article III standing. *Id.* at \*4. Specifically, the district court held that, “like in *Juliana*, Plaintiffs have failed to demonstrate how a declaration regarding Plaintiffs’ rights under the Constitution and the legality of Defendants’ conduct, on its own, is likely to remedy these alleged injuries.” *Id.* at \*6.

Relevant to this appeal, the district court rejected the plaintiffs’ contentions that declaring the challenged EPA policies unconstitutional could redress the plaintiffs’ climate change injuries. *Id.* at \*\*6–8; *see also* State Br., 12–15; Agency Br., 19–34; Agency Reply Br., 13–17; *cf.* Held’s Ans. Br. 42–46, The district court also rejected the Plaintiffs’ attempts to distinguish *Juliana*. *Id.* at \*\*6–8; *cf.* Held’s Ans. Br., 51, n.22.

Respectfully submitted May 21, 2024.

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