

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' THIRD 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

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Plaintiffs/Appellees, pursuant to the provisions of Rule 12(6), M.R.App.P., submit this Third Notice of Supplemental Authority to notify the Court of a Joint Stipulation and Order entered on June 20, 2024, by the Circuit Court of the First Circuit in Hawai‘i regarding a Settlement Agreement reached between the youth Plaintiffs there and the state defendants in a constitutional climate case—*Navahine F., et al. v. Dept. of Transportation, State of Hawai‘i, et al.*, Civil No. 1CCV-22-0000631 (Haw. First Cir. Ct.) (attached hereto). The Stipulation and Order supports arguments made in Plaintiffs/Appellees’ Answer Brief.

Navahine is a case brought by thirteen youth in Hawai‘i, who at the time of filing were between the ages of nine and eighteen years old. Settlement Agreement at 1. The youth Plaintiffs alleged that the state’s transportation system is being established, maintained, and operated in a manner which results in high levels of greenhouse gas (“GHG”) emissions and continued reliance on fossil fuels, thereby causing and contributing to attendant climate change harms to the youth Plaintiffs and impairing their ability to live healthful lives in Hawai‘i now and into the future, in violation of Hawai‘i’s constitutional public trust doctrine (Haw. Const. art. XI, § 1¹) and the constitutional right to a clean and healthful environment (Haw. Const.

¹ Article XI, § 1 of the Hawai‘i Constitution requires the State of Hawai‘i and its agencies “[f]or the benefit of present and future generations,” to “conserve and protect Hawai‘i’s natural beauty and natural resources” and declares that “[a]ll public natural resources are held in trust by the State for the benefit of the people.”

art XI, § 9²). *Id.* The *Navahine* Plaintiffs named as defendants the Hawai‘i Department of Transportation, the State of Hawai‘i, the Department of Transportation Director, and the Governor of Hawai‘i in their official capacities. *Id.* The *Navahine* Settlement Agreement and Order is relevant here for several reasons.

First, the *Navahine* Settlement Agreement and Order makes numerous recitals concerning the harms climate change is causing now to Hawai‘i’s environment, natural resources, economy, and citizens, and particularly its youth. These recitals are consistent with many of the findings of fact made by the District Court here, based on extensive and uncontroverted expert testimony. *See* Settlement Agreement at 1-3; Answer Br. 16-21, 26-27.

Second, the *Navahine* Settlement Agreement and Order articulates and recognizes the nature and scope of the youth Plaintiffs’ constitutional public trust and clean and healthful environment rights under Hawai‘i’s Constitution, which are comparable to Montana’s clean and healthful environmental rights provisions in Article II, Section 3 and Article IX, Section 1 at issue here. *See* Settlement Agreement at 3-4; Answer Br. 54-58. Significantly, the *Navahine* Settlement Agreement and Order recognizes that the right to a clean and healthful environment

² Article XI, § 9 of the Hawai‘i Constitution establishes that “[e]ach person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources.”

under Article XI, Section 9 of the Hawai‘i Constitution “subsumes a right to a life-sustaining climate system.” Settlement Agreement at 4 (citing *In re Maui Elec. Co.*, 150 Hawai‘i 528, 538 n.15, 506 P.3d 192, 202 n.15 (2022)); Answer Br. 63-64.

Finally, the *Navahine* Settlement Agreement and Order recognizes and formalizes the obligations of the State of Hawai‘i’s and the Hawai‘i Department of Transportation to carry out their statutory authority in a manner that is consistent with and fulfills their affirmative constitutional obligations by compelling the establishment of legally-enforceable GHG emissions reduction plans to decarbonize Hawai‘i’s transportation system by 2045. Settlement Agreement at 2, 4-13; Answer Br. 46-50.

RESPECTFULLY SUBMITTED this 3rd day of July 2024.

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