

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' SECOND 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 a recent decision by the Virginia Court of Appeals: *Layla H. by Hussainzadah v. Commonwealth of Virginia*, —S.E. 2d—, 2024 WL 3107613 (Va. Ct. App., Jun. 25, 2024) (“*Layla H.*”), which found that youth plaintiffs in a similar climate challenge could not show the causality and redressability necessary to establish standing.

In *Layla H.*, youth plaintiffs brought a climate change lawsuit against the Commonwealth of Virginia and several Virginia officials and agencies. 2024 WL 3107613 at \*1. The factual allegations in *Layla H.* bear a striking resemblance to the factual allegations of the *Held* plaintiffs. For example, the *Layla H.* plaintiffs alleged that Virginia “implemented a policy and practice of approving permits for fossil fuel infrastructure” that “causes and contributes to the ongoing climate crisis and causes grave harm to these thirteen Youth Plaintiffs.” *Id.* at \*1; *compare* Held Resp. Br., 37. The *Layla H.* plaintiffs further alleged that “[t]he climate crisis, which [Virginia’s] permitting of fossil fuel infrastructure causes and contributes to, is already having profound impacts in Virginia” such as “[i]ncreasing temperatures, sea level rise, more frequent and destructive extreme weather events, and increased incidences of vector-borne illnesses ... imperiling these children.” *Id.*

at \*2. These climate impacts, in turn, allegedly injured the *Layla H.* plaintiffs by, *inter alia*, causing heat rash, increased tick bites, lower agricultural yields, a decreased shellfish population, and climate-change anxiety and “PTSD.” *Id.*; *compare* Held. Resp. Br., 17–21 (summarizing the *Held* plaintiffs’ alleged injuries).

To redress their alleged injuries, the *Layla H.* plaintiffs sought declaratory relief that Virginia’s alleged practice of permitting fossil fuel projects violated their constitutional rights, along with injunctive relief. *See Layla H.*, 2024 WL 3107613, at \*2. The Virginia Court of Appeals concluded that the *Layla H.* plaintiffs lacked standing. *See id.* at \*\*5–9.

The Virginia Court of Appeals explained that the *Layla H.* plaintiffs failed to establish a particularized, justiciable injury and instead raised nonjusticiable policy disagreements about Virginia’s response to climate change:

What is plain from the Plaintiffs’ complaint is that they claim injuries caused by a worldwide issue that would require a broad policy solution to address. Plaintiffs’ own theory is that climate change presents a crisis affecting not only everyone in Virginia but everyone in the world, and the connection they posit between the actual injuries they allege—both to themselves and everyone else—is highly indirect, an unintended downstream consequence of what they argue have been long-term mistaken policy choices. Rather than establishing the necessary particularized injury, Plaintiffs’ complaint presents exactly the kinds of general policy disagreements that fall within the purview of the General Assembly...The doctrine of standing serves to preserve the constitutional separation of powers

by barring judicial resolution of such generalized grievances.

*Id.* at \*7 (citation and quotation marks omitted); *compare* Agency Br., 30

(“[P]olicymaking through the democratic process, not a lawsuit, is the appropriate vehicle for the relief Plaintiffs seek.”); Agency Br., 34 (“By ignoring bedrock standing principles, the District Court ... did not resolve a justiciable case or controversy. It pronounced policy.”); State Br., 16.

The Virginia Court of Appeals also held that the Plaintiffs had failed to satisfy the causation element of standing:

Reading Plaintiffs’ complaint in the best possible light, there is simply no basis to the claim that the Commonwealth’s policies of approving permits for certain facilities ... are responsible for the heat rash, tick bites, reduced shellfish stocks, diminished access to places of recreation, and other injuries that Plaintiffs allege. While the traceability requirement does not mean that the defendant’s actions are the very last step in the chain of causation, standing does require a genuine nexus connecting the Plaintiff’s injuries to the actions they challenge.

*Layla H.*, 2024 WL 3107613, at \*8; *compare* Agency Br. 24–30; State Br. 13–15.

Finally, the Virginia Court of Appeals recognized that, while redressability need not be “a total solution,” the *Layla H.* plaintiffs’ injuries were nevertheless not redressable:

[G]iven the global nature of the climate change issue, Plaintiffs have not shown that they personally would benefit in a tangible way from the court’s intervention. In

short, Plaintiffs have not shown that they would receive a tangible benefit simply from a judgment declaring unconstitutional the challenged portions of the Virginia Gas and Oil Act or the Commonwealth's policies pursuant to that Act. Even if we were to conclude that such a claim could be inferred from portions of the complaint, that inference would be contradicted by the complaint's other, explicit allegations that addressing the negative impacts of climate change would require a *global* reduction in greenhouse gas emissions and 'reducing Earth's energy imbalance to near zero.' According to the complaint, climate change is a global phenomenon and it is affected by actors around the world—nearly all of whom are not a party to this case. **Plaintiffs' complaint does not establish that any remedy that a Virginia court could arguably grant against the Defendants here would have any true impact on Plaintiffs' alleged injuries.**

*Layla H.*, 2024 WL 3107613, at \*6, 8 (emphasis added; citations and internal quotation marks omitted); *compare* Agency Br. 27 (“[W]hatever happens to GHG emissions in the future depends on the speculative future actions of billions of third parties. Standing cannot rely on speculation about the unfettered choices made by independent actors not before the court.”) (citation and quotation marks omitted); Agency Br., 29 (“At bottom, no single judicial action in Montana can meaningfully reduce climate change, and thus redress Plaintiffs’ injuries. That would require a fundamental transformation of the world’s energy system.”); State Br., 16–17.

Respectfully submitted July 9, 2024.

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