

## Montana Trial Court Holds That Youths Have Standing to Bring Constitutional Claims Against State Government For Alleged Climate Change-Related Harms

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On August 14, 2023, in a “landmark” ruling, a Montana state court held that youth plaintiffs had standing to assert constitutional claims against the State of Montana, its governor and state agencies for “ignoring” the impact of greenhouse gas (GHG) emissions on climate change. *Held v. State of Montana*, Cause No. CDV-020-307 (1st Judicial Dist. Ct., Lewis & Clark Cty., Mt.). Agreeing with the plaintiffs, the court concluded that a limitation in the Montana Environmental Policy Act (MEPA), which prohibited the state from considering climate impacts when issuing permits for energy projects, violated the plaintiffs’ right under the state constitution to a “clean and healthful environment.”

MEPA, enacted in 1971, states that its purposes include “provid[ing] for the adequate review of state actions in order to ensure that . . . environmental attributes are fully considered by the legislature in enacting laws to fulfill constitutional obligations . . .” In 2011, the legislature amended the statute to curtail the scope of environmental reviews. Under the so-called MEPA limitation, Montana agencies cannot consider “an evaluation of greenhouse gas emissions and corresponding impacts to the climate in the state or beyond the state’s borders.” Mont. Code Ann. § 75-1-201(2)(a). In 2023, the legislature added a provision that eliminated equitable remedies (i.e., the ability to “vacate, void, or delay a lease, permit, license, certificate, authorization, or other entitlement or authority”) for litigants who “claim that [an] environmental review is inadequate based in whole or in part upon greenhouse gas emissions and impacts to the climate in Montana or beyond Montana’s borders . . .” *Id.* § 75-1-201(6)(a)(ii).

The central issue in *Held* was whether the MEPA limitation violated Article II, Section 3 of Montana’s Constitution, which states: “All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment.” Based on evidence presented at a multi-day trial, the court found that the plaintiffs had standing to raise this constitutional challenge on the grounds they “have experienced past and ongoing injuries resulting from the State’s failure to consider GHGs and climate change, including injuries to their physical and mental health, homes and property, recreational, spiritual, and aesthetic interests, tribal and cultural traditions, economic security, and happiness.” Citing testimony from expert witnesses, the court also found there was “a fairly traceable connection” between the MEPA limitation and “the state’s allowance of resulting fossil fuel GHG emissions, which contribute to and exacerbate Plaintiffs’ injuries.”

In addition, the court determined that the 2023 amendment to MEPA did not bar the plaintiffs from seeking equitable relief, reasoning that its elimination of remedies otherwise available to “prevent irreversible degradation of the environment” was “facially unconstitutional” under existing Montana case law. Ultimately, the court concluded that, “[b]y prohibiting consideration of climate change, GHG emissions, and how additional GHG emissions will contribute to climate change or be consistent with the Montana Constitution, the MEPA Limitation violates Plaintiffs’ right to a clean and healthful environment and is facially unconstitutional.” The court issued an order that, among other things, permanently enjoins enforcement of the MEPA limitation and the 2023 amendment.

Although it is subject to appellate review, *Held* is the first case to recognize that youths have standing to claim violation of constitutional rights as a result of climate change. Similar suits are pending in states such as Hawaii, Utah and Virginia. In a case venued in Oregon federal court, *Juliana v. United States*, youth plaintiffs were recently permitted to amend their complaint following a decision by the Ninth Circuit that they had lacked standing to sue the federal government for violating their claimed right under the

Fifth Amendment Due Process Clause to a "climate system capable of sustaining human life." That case is expected to proceed to trial.

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