



Green Amendment Victories

How Green Amendments Are Recognizing & Protecting Environmental Rights



GREEN AMENDMENTS
FOR THE GENERATIONS
Pure Water. Clean Air. Healthy Environment.

Pennsylvania, Montana, New York, are the only three states in the U.S. that currently promise, protect and respect constitutional environmental rights protected on par with other fundamental human, civil and political rights we hold as inviolate, inherent, inalienable and inalienable rights protected from government infringement and transgression. In this series we share the varied ways that constitutional recognition is providing meaningful and transformative protection in the states where they exist, thereby making the case for constitutional Green Amendments in states across our nation and ultimately at the federal level.

Held v. State of Montana

(Mt. First Jud. Dis. Ct., Lewis & Clark Cty.) (Aug. 4, 2021)

Sixteen Youth Plaintiffs filed suit against several Montana state agencies and the Governor of Montana (collectively, “state of Montana”) for alleged violations of several sections of the Montana Constitution in *Held v. Montana*.¹ The governmental actions that gave rise to the suit were: 1) the codification of the State Energy Policy of Montana, which promotes fossil fuel energy, and; 2) the enactment of the plaintiff-categorized “Climate Change Exemption” within the Montana Environmental Policy Act (MEPA), which “grants agencies the authority to disregard climate change analyses in conducting environmental review of proposed projects.”² The Youth Plaintiffs have asserted, among other claims, that the state of Montana has violated their constitutional rights to a clean and healthful environment under Article II, Section 3 and complimentary environmental provisions of the Montana Constitution (*aka* the Montana Green Amendment) — by supporting an energy system dependent on fossil fuels, which contributes to climate change.

¹ *Held v. State of Montana*, Cause No. CDV-2020-307, at p.1–2 (Mt. First Jud. Dis. Ct., Lewis & Clark Cty.) (Aug. 4, 2021) (order on mot. to dismiss) [hereinafter Order on Mot. to Dismiss].

² *Id.*

Youth Plaintiffs sought a declaration from the court that the challenged statutory provisions were unconstitutional under the Montana Constitution.³ Youth Plaintiffs also requested injunctive relief, in part, in the form of an order from the court, directing the state of Montana to develop a “remedial plan or policies to effectuate reductions of GHG emissions in Montana consistent with the best available science and reductions necessary to protect Youth Plaintiffs’ constitutional rights from further infringement by [the state of Montana]. . . .”⁴ Additionally, Youth Plaintiffs requested injunctive relief in the form of ordering the state of Montana to retroactively review and “prepare a complete and accurate accounting of Montana’s GHG emissions, including those emissions caused by the consumption of fossil fuels extracted in Montana and consumed out of state, and Montana’s embedded emissions.”⁵

In response to Youth Plaintiffs’ complaint, the state of Montana moved to dismiss, arguing that: 1) Youth Plaintiffs did not have standing because the Youth Plaintiffs could establish neither causation nor redressability; 2) the requested relief presented a political question, and was therefore nonjusticiable; and 3) Youth Plaintiffs failed to exhaust their administrative remedies before filing suit.⁶ On August 4, 2021, the court issued its Order on Motion to Dismiss.

The court determined that Youth Plaintiffs established “case or controversy” standing. The *Held* parties “did not dispute that Youth Plaintiffs allege[d] a variety of past, present, and threatened injuries.”⁷ While Montana’s standing requirements do not explicitly “direct plaintiffs to prove causation, causation is nonetheless implicit in establishing standing,” akin to federal standing requirements. Citing the *Juliana v. United States* and *WildEarth Guardians v. United States Department of Agriculture* cases,⁸ the court provided that **plaintiffs can demonstrate causation “even if there are multiple links in the chain . . . as long as the chain is not hypothetical or tenuous” and “even if the defendant was one of multiple sources of injury.”** With these principles in mind, the court articulated

[b]ased on the facts alleged, Youth Plaintiffs have demonstrated that a genuine factual dispute exists with respect to whether [the state of Montana’s] actions, taken pursuant to the two relevant statutory provisions, were a substantial factor in Plaintiffs’ injuries.

Order on Mot. to Dismiss, *supra* note 1, at pg. 9.

Youth Plaintiffs alleged facts sufficient to support their claim that the state of Montana’s “aggregate acts”—authorization of a “host of policies, from subsidies . . . to permits” and “deliberate[] fail[ure] to consider or account for climate change in their MEPA analysis”—significantly contributed to climate change via carbon emissions authorized through the two statutory provisions at issue (*i.e.*, the State Energy Policy and MEPA’s “Climate Change Exception”).⁹ The court pointedly offered that

³ Complaint for Declaratory and Injunctive Relief, Prayer for Relief at ¶¶ 1–4, *Held v. State of Montana* (Mt. First Jud. Dis. Ct., Lewis & Clark Cty.) (Mar. 13, 2020).

⁴ *Id.* at Prayer for Relief at ¶ 7.

⁵ *Id.* at Prayer for Relief at ¶ 6.

⁶ Order on Mot. to Dismiss, *supra* note 1, at 2.

⁷ Order on Mot. to Dismiss, *supra* note 1, at p. 7.

⁸ *Juliana v. United States*, 947 F.3d 1159 (9th Cir. 2020); *WildEarth Guardians v. United States Dep’t of Agric.*, 795 F.3d 1148 (9th Cir. 2015).

⁹ Order on Mot. to Dismiss, *supra* note 1, at pg. 11–15.

- “[w]hile all states contribute to the nation’s overall carbon emissions, Youth Plaintiffs sufficiently allege[d that [the state of] Montana is responsible for a significant amount of those carbon emissions . . . [and that] for purposes of a motion to dismiss, Youth Plaintiffs have sufficiently raised a factual dispute as to whether the State Energy Policy was a substantial factor in causing Youth Plaintiffs’ injuries.”
- Regarding the Climate Change Exemption, the court determined that it allows the state of Montana “to effectively turn a blind eye to constitutional violations . . . [and] allows [the state of] Montana to ignore whether state-approved projects will impede on a clean and healthful environment with respect to climate change.”
- Additionally, “. . . Youth Plaintiffs need not allege significant and physical manifestations of an infringement of their constitutional right to a clean and healthful environment to enforce their constitutional right. . .”

Resultingly, the court declined to dismiss Youth Plaintiffs’ claims related to these two statutory provisions.

The court also determined that it could grant Youth Plaintiffs’ declaratory relief because they met their burden of demonstrating that an order declaring the two statutory provisions unconstitutional would redress their injuries.¹⁰ Notably, the standard Youth Plaintiffs had to meet for their request for declaratory relief in *Held* departed from that which the Ninth Circuit applied to the comparable claim in *Juliana*. Whereas the *Juliana* plaintiffs had to demonstrate that the relief sought was “substantially likely to redress their injuries,” **the *Held* plaintiffs need only “demonstrate that the relief sought [would] ‘alleviate, remedy, or prevent’ harm caused by the state of Montana.”**¹¹ Resultingly, the court denied the state of Montana’s motion to dismiss Youth Plaintiffs’ request for declaratory relief because “**if the court declared these statutory provisions unconstitutional, it would partially remove or correct the injuries suffered by Youth Plaintiffs.**”

While the court found that it had authority to potentially grant the Youth Plaintiffs’ request for declaratory relief, the court determined that it did not have “authority to grant the Youth Plaintiffs’ request for injunctive relief, including Plaintiffs’ request for a remedial plan like in *Juliana*.”¹² The court partially granted the state of Montana’s motion to dismiss on the grounds that Youth Plaintiffs’ claim for injunctive relief would constitute a nonjusticiable, political question.¹³

The court determined that it would be encroaching upon the powers vested exclusively in the Montana Legislature were it to order the state of Montana to create and implement the requested remedial plan.¹⁴ The court similarly granted the State of Montana’s motion to dismiss Youth Plaintiffs’ request for injunctive relief in the form of a retroactive accounting of GHG emissions because it violated the political question doctrine as well.¹⁵

¹⁰ *Id.* at pg. 16.

¹¹ *Id.* at pg. 17.

¹² *Id.* at pgs. 16–17.

¹³ *Id.* at pg. 21.

¹⁴ *Id.* at pg. 19.

¹⁵ *Id.* at pg. 21.

Despite dismissing Youth Plaintiffs’ request for injunctive relief, the court accepted Youth Plaintiffs’ argument that it could permit the Plaintiffs’ claims for declaratory relief to move forward.¹⁶

Importantly, the court disagreed with the state of Montana’s argument that Youth Plaintiffs were required to file an administrative challenge before filing suit in court. The court determined that **Youth Plaintiffs did not need to first seek administrative review of the state of Montana’s actions before seeking judicial review in the district court because the Youth Plaintiffs were seeking direct enforcement of their constitutional rights.**¹⁷

The court granted the State of Montana’s motion to dismiss regarding Youth Plaintiffs’ request for injunctive relief in the form of a remedial plan and retroactive accounting of GHG emissions and denied the state of Montana’s motion to dismiss Youth Plaintiffs’ remaining requests for relief.¹⁸

Though this case will now proceed on to the merits stage of litigation, this order is a definitive step in the right direction in protecting the constitutional rights of the people of Montana—including younger generations—to a clean and healthful environment.

¹⁶ *Id.* at pg. 22.

¹⁷ *Id.* at 23.

¹⁸ The full text of the requests for relief the court dismissed include:

6. An order requiring Defendants to prepare a complete and accurate accounting of Montana’s GHG emissions, including those emissions caused by the consumption of fossil fuels extracted in Montana and consumed out of state, and Montana’s embedded emissions;

7. An order requiring Defendants to develop a remedial plan or policies to effectuate reductions of GHG emissions in Montana consistent with the best available science and reductions necessary to protect Youth Plaintiffs’ constitutional rights from further infringement by Defendants, and to reduce the cumulative risk of harm to those rights; to submit the remedial plan to the Court by a date certain; and to implement the plan;

8. An order that, if necessary, a special master or equivalent, with appropriate expertise, be appointed to assist the Court in reviewing the remedial plan for efficacy; and

9. An order retaining jurisdiction over this action until such time as Defendants have fully complied with the orders of this Court, or there are adequate assurances that Defendants will continue to comply in the future absent continuing jurisdiction;