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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI‘I

NAVAHINE F., a Minor, by and through her natural guardian, et al.,	) CIVIL NO. 1CCV-22-0000631 JPC) (Environmental Court)
Plaintiffs,	) PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS
v.	)
DEPARTMENT OF TRANSPORTATION, STATE OF HAWAI‘I, et al.,	) Judge: Hon. Jeffrey P. Crabtree) Hearing Date: October 5, 2022) Hearing Time: 9:00 a.m.
Defendants.	)

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

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I. INTRODUCTION

In this declaratory judgment action, 14 Hawai‘i youth plaintiffs ("Youth Plaintiffs") from across the pae ‘āina (islands) who are experiencing existential injuries including the loss and damage of homes and kuleana lands, request that this Court recognize and protect their constitutional rights to a life–sustaining environment and climate. They seek to hold the State, Governor, and the Department of Transportation and its Director ("HDOT") (collectively, "Defendants') accountable for administering a state transportation system that promotes and exacerbates the declared "climate emergency," contrary to legislative and constitutional mandates.

Defendants, in response, seek to bar the courthouse doors to Youth Plaintiffs, as well as bar Hawai‘i's courts from any role in defending their constitutional rights. In their formulaic and perfunctory motion to dismiss, Defendants not only deny that they have mandatory constitutional duties to protect the environment and climate, but also seek to immunize themselves from any legal accountability in court to their public trust beneficiaries, including future generations. Defendants' arguments highlight why Youth Plaintiffs' action is not only legally valid, but indeed *necessary*, to rectify Defendants' misunderstandings and violations of their constitutional duties and Youth Plaintiffs' constitutional rights.

Contrary to Defendants' misconception, Youth Plaintiffs have stated claims for relief under established Hawai‘i law. The Hawai‘i Supreme Court has recognized the State and its agencies have "independent" and "affirmative" constitutional duties under article XI, § 1 to protect *all* natural resources for present and future generations—and are "judicially accountable" for these duties. The court has also recognized a substantive constitutional "right to a life–sustaining climate system" under article XI, § 9, as defined by the numerous laws mandating Defendants to mitigate climate change—along with a procedural constitutional right of judicial enforcement. Defendants' arguments that they have no duties concerning the climate, but rather only "aspirational" goals that they can disregard at their "discretion," indicates that this Court has an essential role and important work to do in this case.

Undeterred by rulings already recognizing constitutionally protected and judicially enforceable public trust and environmental rights, Defendants further pursue various stock arguments denying that this case presents a "judicial controversy." These arguments also contradict established Hawai‘i law, as well as common sense. Contrary to Defendants'

breathless accusations, Youth Plaintiffs do not ask the Court to "take control" of HDOT, but rather to issue a declaration of law on Defendants' violations of established legislative and constitutional mandates to mitigate climate change, in a case where HDOT itself demonstrates a need for clarity, focus, and attention. Far from a "political question," interpreting and defending the constitution is the courts' appointed role in our democratic system. Defendants similarly misstate the law in arguing that Youth Plaintiffs lack standing, when the Hawai'i Supreme Court has already ruled that declaratory actions like this one do not apply the standards Defendants cite, but rather require only "antagonistic claims" and "concrete interests" in rights—a standard Youth Plaintiffs undeniably meet. Finally, Defendants argue an irrational Catch-22 in insisting that this action is not "ripe," and that Youth Plaintiffs cannot allege any violation of climate mandates until 2045, when it will be too late to do anything about it. Youth Plaintiffs are alleging a current and ongoing violation of Defendants' constitutional duties and Youth Plaintiffs' constitutional rights, which the Court can and should declare without delay to minimize the ever-escalating harms. In sum, Defendants' attempt to dismiss this case should be rejected, so that the Court can proceed to address the substantive law and facts in this case and uphold the constitutional duties and rights that Defendants refuse to even acknowledge.

II. LEGAL STANDARD

"Hawaii's rules of notice pleading require that a complaint set forth a short and plain statement of the claim that provides defendant with fair notice of what the plaintiff's claim is and the grounds upon which the claim rests." *Genesys Data Technologies, Inc. v. Genesys Pac. Technologies, Inc*., 95 Hawai'i 33, 41, 18 P.3d 895, 903 (2001). "The court must accept plaintiff's allegations as true and view them in the light most favorable to the plaintiff; dismissal is proper only if it 'appears beyond doubt that the plaintiff can prove no set of facts in support of his or her claim that would entitle him or her to relief.'" *Wong v. Cayetano*, 111 Hawai'i 462, 476, 143 P.3d 1, 15 (2006), *as corrected* (Aug. 29, 2006). The court's "duty then is to view the [plaintiffs'] complaint in a light most favorable to them," and "to decide whether the allegations could give rise to recovery under alternative theories of relief." *Ravelo by Ravelo v. Hawai'i Cnty*., 66 Haw. 194, 199, 658 P.2d 883, 886–87 (1983). "[A] motion to dismiss for failure to state a claim should rarely be granted." *Au v. Au*, 63 Haw. 210, 221, 626 P.2d 173, 181 (1981).

III. DEFENDANTS FAIL TO MEET THE HIGH STANDARD FOR A MOTION TO DISMISS, AND YOUTH PLAINTIFFS' CLAIMS FOR VIOLATIONS OF THEIR CONSTITUTIONAL RIGHTS MUST BE HEARD ON THE MERITS.

A. Youth Plaintiffs Have Stated a Claim for Relief Under the Constitutional Public Trust Doctrine, Article XI, Section 1 (Count I).

Defendants' halfhearted attempt to dismiss Youth Plaintiffs' public trust claim would wholeheartedly eviscerate Hawai'i's public trust doctrine. Defendants' repudiation of their public trust obligations only reinforces why Youth Plaintiffs' claim is not only valid, but necessary to uphold the public trust.

Defendants do not dispute that the constitutional public trust doctrine's mandate, expressly binding "the State and its political subdivisions," applies to all of them. Specifically as to HDOT, however, Defendants propose their own version of the constitutional public trust in which "[a]n agency's statutory authorities thus cabin its public trust obligations." Defs.' Mot. to Dismiss ("Mot.") at 12. Defendants have it exactly backward: agency statutory authorities "do not override the public trust doctrine"; rather, "the doctrine continues to inform the [statute]'s interpretation, define its permissible 'outer limits,' and justify its existence." *In re Waiāhole Ditch Combined Contested Case Hr'g*, 94 Hawai'i 97, 133, 9 P.3d 409, 445 (2000) ("*Waiāhole*").

Defendants further seek to nullify the constitutional public trust in arguing that Youth Plaintiffs "do not and cannot identify a specific exercise of a 'statutory function' that HDOT failed to perform in accordance with its public trust duties." Mot. at 12. First, in attempting to relegate the constitutional public trust to some secondary, subordinate duty in relation to HDOT's "statutory function," HDOT contradicts established law. As the Hawai'i Supreme Court has made clear, "[t]he State's *constitutional public trust obligations exist independent of any statutory mandate* and must be fulfilled regardless of whether they coincide with any other legal duty." *Ching v. Case*, 145 Hawai'i 148, 178, 449 P.3d 1146, 1176 (2019) (emphasis added). Youth Plaintiffs have extensively set forth these independent duties under the constitutional public trust, *see* Compl. ¶¶ 64–77,[1] which Defendants fully ignore in their motion.

[1] *See*, *e.g.*, *Ching*, 145 Hawai'i at 177, 449 P.3d at 1175 ("As trustee, the State must take an active role in preserving trust property and may not passively allow it to fall into ruin."); *Waiāhole*, 94 Hawai'i at 143, 9 P.3d at 455 (The State and its agencies must "take the initiative in considering, protecting, and advancing public rights in the resource at every stage of the planning and decisionmaking process," "consider the cumulative impact" of their actions on

Further, Defendants ignore the extensive allegations in Youth Plaintiffs' Complaint on how Defendants have breached their duties as trustees "by establishing, maintaining, and operating a state transportation system that results in high levels of greenhouse gas emissions and exacerbates Earth's energy imbalance, resulting in grave and existential harms to public trust resources, including the climate system and all other natural resources affected by climate change." Compl. ¶ 180. Specifically, the transportation system the State maintains and controls accounts for a growing majority of statewide greenhouse gas emissions; transportation–related emissions are *increasing* rather than decreasing; and these emissions are harming all public trust resources, including the climate system. *See id.* ¶¶ 94–138. Defendants are exercising their undisputed broad authority and jurisdiction over the state transportation system[2] in a way that harms the public trust, including but not limited to failing to implement "measures to reduce vehicle miles traveled, electrify transportation and transportation facilities, increase the use of alternative fuels in the ground, air, and marine transportation sectors, and expand multimodal transportation options such as public transit, pedestrian pathways, and bikeways." *Id.* ¶ 183. Defendants have engaged in a systemic pattern and practice of conduct and decision–making that affirmatively harms public trust resources and fails to account for reasonable mitigation and alternatives available to the agency in executing its duties. *Id.* ¶¶ 158–78.

As far as Defendants' exclusive focus on HDOT's "statutory function," Defendants do not assert that HDOT's statutory authorities and duties conflict in any way with its constitutional public trust duties. They *do not* conflict, and in any event, Defendants *could not* invoke HDOT's statutory authority to override the constitutional public trust. Defendants, moreover, disregard the numerous statutes enacted by the legislature to address the escalating "climate emergency" that require HDOT to assess the amount of greenhouse gases being emitted from the state transportation system, and plan and implement measures that will reduce these emissions. *See id.* ¶¶ 78–93. Multiple acts, statutes, and expert agency reports (which Defendants are directed

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public trust resources, and "implement reasonable measures to mitigate this impact, including the use of alternative[s]."); *id.* at 143, 155, 9 P.3d at 455, 467 ("The trust also requires planning and decisionmaking from a global, long-term perspective" and incorporates the "precautionary principle.").

[2] Defendants' general duties to establish, maintain, and operate state highways, harbors and airports (collectively the "state transportation system") are set forth in paragraphs 56–63 of the Complaint.

by law to consider, but have systemically disregarded and ignored) have for years identified measures Defendants can take to reduce transportation related greenhouse gas emissions consistent with the best available science. *See id.* ¶¶ 78–93, 136–58. In sum, Defendants are not claiming any conflict between HDOT's statutory and constitutional duties, but they cannot deny and avoid their independent and affirmative duties under the constitutional public trust in any event.

Defendants' further argument that the public trust doctrine does not concern climate change because the article XI, § 1 applies only to "fundamentally local issues" and resources may not lack for boldness, but lacks legal basis. Mot. at 13. Article XI, § 1 expressly refers to "all natural resources" (which Defendants conveniently excise in their quote of the provision). By its terms, "all" includes the climate system as a natural resource in itself, as well as all the other natural resources it comprehensively encompasses and affects. *See* Compl. ¶¶ 65–67, 180. Indeed, the Hawai'i Supreme Court has already disposed of Defendants' argument in making clear that the public trust relates to "protection of air and other trust resources affected by climate change," and recognizing the associated constitutional "right to a life–sustaining climate system." *In re Maui Elec. Co.*, 150 Hawai'i 528, 538 n.15, 506 P.3d 192, 202 n.15 (2022) ("*MECO*").[3] Defendants' self–defeatist argument that they have no duties concerning climate change because "they cannot realistically control climate change's local impacts, like sea level rise and shoreline erosion," Mot. at 13, is not aligned with *any* law in Hawai'i, particularly the constitutional public trust doctrine.

Finally, Defendants argue that any public trust claim must be dismissed for failure to follow "the legislature's mandated process for obtaining judicial review" under HRS chapter 91, without citing any authority, or explaining how that statute even applies. Hawai'i courts have never recognized any such limitation on constitutional public trust claims. *See*, *e.g.*, *Ching*, 145 Hawai'i at 174, 449 P.3d at 1172 (holding that "a breach of trust claim . . . presents the type of controversy that is necessary to qualify for relief under HRS § 632-1(b)"). In sum, Youth

[3] Defendants instead rely on an out-of-state case that, contrary to the Hawai'i Supreme Court's ruling, observed that "Washington has not yet expanded the public trust doctrine to encompass the atmosphere." *Aji P. v. State*, 480 P.3d 438, 457 (Wash. Ct. App. 2021). That case was wrongly decided in Washington and is not relevant to Hawai'i law.

Plaintiffs' public trust claim is legally valid and properly alleged, and Defendants' attempt to dismiss this claim should be rejected.

B. Youth Plaintiffs Have Stated a Claim for Relief Based on Their Right to a Clean and Healthful Environment, Article XI, Section 9 (Count II).

Similarly, Defendants' attempt to dismiss Youth Plaintiffs' claim under article XI, § 9's right to a clean and healthful environment ignores and distorts the Complaint and the law and confirms the need for a declaration from this Court to rectify Defendants' legal misconceptions and violations. As the Complaint details, Defendants have violated and are continuing to violate Youth Plaintiffs' "*substantive* right to 'a clean and healthful environment,'" as defined by numerous laws related to "[t]he need to mitigate the catastrophic effects of anthropogenic climate change." *MECO*, 150 Hawai'i at 538 n.15, 506 P.3d at 202 n.15 (emphasis added). The Hawai'i Supreme Court has already made clear that "this right is *constitutionally vested*" and "*subsumes a right to a life–sustaining climate system*." *Id.* (emphasis added). Defendants' insistence that none of the numerous laws requiring them to move the State's transportation system off of fossil fuels and mitigate climate change concern "environmental quality" flies directly in the face of the supreme court's ruling, the legislature's mandates, and Youth Plaintiffs' constitutional rights.

In determining whether a law is "related to environmental quality" within the meaning of article XI, § 9, Hawai'i courts look to its language, legislative history, and stated purposes. *Cnty. of Hawai'i v. Ala Loop* Homeowners, 123 Hawai'i 391, 409–10, 235 P.3d 1103, 1121–22 (2010), *abrogated on other grounds by Tax Found. v. State*, 144 Hawai'i 175, 439 P.3d 127 (2019) ("*Ala Loop*"); *In re Maui Elec. Co.*, 141 Hawai'i 249, 261–64, 408 P.3d 1, 13–16 (2017). Defendants' disregard aside, each of the statutes cited in Count II of the Complaint explicitly and necessarily relates to environmental quality and article XI, § 9's right to a life–sustaining climate system:

- HRS § 225P–5: In adopting the Zero Emissions Target to "sequester more atmospheric carbon and greenhouse gases than emitted within the State as quickly as practicable, but no later than 2045," HRS § 225P–5(a), the legislature stated its intent to address "[r]ising global temperatures," "***mitigat[e] climate change***," and "protect public health." 2018 Haw. Sess. Laws Act 15, § 1 (emphasis added). Consistent with this intent, Act 15 further mandates that "[a]fter January 1, 2020, agency plans, decisions, and strategies shall give consideration to the impact of

those plans, decisions, and strategies on the State's ability to achieve the goals in this section." *Id*. § 2 (codified at HRS § 225P–5(b)). The statute restates that the purpose of the Zero Emissions Target is to "address the effects of climate change to protect the State's economy, environment, health, and way of life." *Id.* § 3 (codified at HRS § 225P–1). In meeting the Zero Emissions Target, Defendants must "utilize the best available science, technologies, and policies to reduce greenhouse gas emissions." *Id.* § 4. *See* Compl. ¶¶ 63, 90–91, 123.

- HRS §§ 196–9 & 225P–7: The statutes establishing Defendants' mandatory duties to decarbonize the transportation sector, including the State's vehicle fleets, are also explicitly concerned with mitigating climate change. In adopting these statutes, the legislature "f[ound] that the use of fossil fuels is the State's primary contributor to greenhouse gas emissions. ***These emissions cause climate change, which poses a serious threat to the State's*** economic well–being, ***public health***, infrastructure, and ***environment***." Act 74, Sess. Laws. Haw. 2021, § 1 (emphasis added). To address these environmental problems, the legislature established a timeline for the State to transition its fleet to electric vehicles ("EVs"), *id.* §§ 2, 5 (codified at HRS § 196–9(c)(10), (11) & HRS § 225P-7(b)), and emphasized that the duty to decarbonize the transportation sector extends to each agency of the State. *Id.*, § 2 (codified at HRS § 225P–7(a)). *See* Compl. ¶¶ 84, 86, 89, 93, 153, 187.

- HRS §§ 226–17, –18: In 1994, the legislature amended the Hawai'i State Planning Act ("HSPA") to require State planning documents to promote "alternate fuels and energy efficiency" through "diversification of transportation modes and infrastructure." Act 96, Sess. Laws. Haw. 1994, §§ 3, 4 (codified as HRS §§ 226–17(b)(13) and –18(b)(7)). In amending the HSPA, the legislature explicitly found that "Hawaii's energy resources and physical environment must be managed and protected in a manner that ensures the health, safety, and welfare of the citizens of the State and ***preserves our limited natural resources for future generations***." *Id.* § 1 (emphasis added). In 2015, the legislature further amended HRS § 226–18 to require the Defendants to "[i]ncrease energy security and self–sufficiency through the ***reduction and ultimate elimination of Hawaii's dependence on imported fuels for electrical generation and ground transportation***." Act 38, Sess. Laws. Haw. 2015, § 2 (emphasis added). HDOT is governed by these statutes in preparing all its long–range and short–range planning documents. *See* Compl. ¶¶ 86, 187.

- HRS §§ 264–142, –143: Part X of HRS chapter 264, "Ground Transportation Infrastructure," provides that HDOT "shall develop and implement a plan" to establish "a contiguous network" of bicycle and pedestrian "highways or pathways" in addition to traditional vehicular highways. HRS § 264–142(a), (b). Part X also specifies that when "planning, designing, and implementing ground transportation infrastructure" projects, HDOT shall endeavor to implement specific decarbonization measures, including but not limited to the Zero Emissions Target, the State's multimodal Complete Streets Policy, *id.* § 264–20.5(a), and a reduction in vehicle miles traveled, *id.* § 264–143(a). In adding these sections to the Highways statute, the legislature made its environmental concerns abundantly clear, stating that: "[m]odernizing ground transportation . . . will . . . ***help meet Hawaii's goals to eliminate fossil fuels in ground transportation*** and sequester more greenhouse gasses than the State emits by 2045." 2021 Haw. Sess. Laws Act 131 § 1 (emphasis added).[4] *See also* Compl. ¶¶ 57, 84–85, 87–88, 93, 155, 187.

As described above and in the Complaint, the laws enumerated in Count II set forth Defendants' comprehensive and interrelated authority and duties to reduce fossil fuel use and pollution and mitigate climate change by planning, building, and maintaining a transportation system that accommodates and promotes electrification, alternative fuel, and multi–modal transportation options, provides for greater overall energy efficiency, and achieves the State's decarbonization goals. Compl. ¶¶ 78–93. Instead, Defendants have "impaired and infringed upon Youth Plaintiffs' right to a clean and healthful environment, including the right to a life–sustaining climate system, by establishing, maintaining, and operating a transportation system that results in high levels of greenhouse gas pollution and exacerbates Earth's energy imbalance at odds with the Zero Emissions Target, HRS § 225P–5, and other laws mandating HDOT to reduce greenhouse gas pollution and decarbonize the transportation sector." *Id.* ¶ 187; *see also id.* ¶¶ 11–55, 94–178. These allegations more than suffice to state a claim for relief under article XI, § 9.

[4] Defendants argue that HRS § 226-142 (mandating that HDOT establish contiguous networks of bikeways and sidewalks) is not a law relating to environmental quality, citing to a single committee report. Mot. at 6. The committee report does not address the legislation's purpose and need, and the legislation itself makes clear that its purpose encompasses safety, equity, cost of living, *and* environmental goals. 2021 Haw. Sess. Laws Act 131, § 1.

In addition to disregarding their environmental responsibilities, Defendants seek to dismiss them as mere "aspirational" goals that cannot be "violated"—at least not yet, until it is too late to do anything about it. Mot. at 7. Defendants' logic is misguided and lies at the root of the violations Youth Plaintiffs allege. Defendants cannot expect to decarbonize the entire transportation sector on the eve of the 2045 deadline. Meeting the Zero Emissions Target and other environmental and climate goals necessarily depends upon planning and budgeting choices that must be made years or decades in advance of program and project implementation. *See* Compl. ¶¶ 85–86. Specific emissions–reducing projects (such as bikeways and pathways) will never be funded or constructed if they are not included in Defendants' plans *now*. Indeed, Youth Plaintiffs allege a systemic disregard by Defendants for the environmental mandates set forth by the legislature, as demonstrated by the growing volume and proportion of greenhouse gas emissions from the transportation sector and state government projections that transportation emissions will increase 41% between 2020 and 2030. *Id.* ¶¶ 125–35. Defendants' pattern and practice of plans and decisions exacerbating greenhouse gas emissions from the transportation sector is *ongoing* and, without a declaration of Defendants' legal duties by this Court, will foreclose the State's ability to reach the Zero Emissions Target and other climate mitigation mandates "as soon as practicable" and exacerbate the constitutional injuries the Youth Plaintiffs are already experiencing. *Id.* ¶¶ 137–78.[5] *See also* Part VI below (responding to Defendants' same arguments in relation to their "ripeness" claim).

Likewise, Defendants' repeated references to their "discretion," Mot. at 8–10, do not and cannot reduce their legal duties to mitigate climate change to mere "aspirational" preferences, or deprive Youth Plaintiffs of their constitutional rights to a life–sustaining climate system. The gravamen of Youth Plaintiffs' claim is that Defendants are "not only failing to reduce greenhouse gas emissions from the state transportation system, but are, indeed, heading in the opposite direction, without any plan or prospect for meeting the Zero Emissions Target or any other meaningful climate mitigation goal based on the best available science." Compl. ¶ 4; *see also id.* ¶¶ 158–78. Defendants have no discretion to engage in these violations of their duties

[5] The legislature recently mandated a reduction of statewide greenhouse gas emissions to 50% from 2005 by 2030, as an interim benchmark for meeting the 2045 Zero Emissions Target, confirming the need for *near-term* action in pursuing a trajectory of emissions reductions to achieve the end goal. *See* 2022 Haw. Sess. Laws Act 238, § 2.

and Youth Plaintiffs' rights. And clarifying and ensuring compliance with these duties will not interfere with Defendants' discretion in fulfilling them, particularly where Defendants' refuse to acknowledge they have any such duties in the first instance. *Compare* Mot. at 10 (arguing that "Plaintiffs cite no law requiring plans"), *with* Compl. ¶¶ 86–90, 185–88 (citing HRS §§ 196-9(c)(6), (10); 225P-5, -7; 226-17, -18; 264-142, -143, which require plans in line with specific environmental mandates).

Finally, in asserting that Youth Plaintiffs must also "demonstrate that the legislature has not provided for private enforcement of that environmental law by other means," Mot. at 4–5, Defendants invent a new standard from whole cloth. Neither the *Ala Loop* case Defendants cite, nor any other case, articulates or imposes any such requirement. *Ala Loop*, in fact, rejected the proposition that a statute could abolish citizens' constitutional procedural right to enforce their substantive rights in court, which would not be a "reasonable" limitation under article XI, § 9. 123 Hawai'i at 418, 235 P.3d at 1130.[6] Defendants insist that the Hawai'i Administrative Procedures Act ("HAPA"), HRS chapter 91, must be the exclusive means to challenge Defendants' constitutional violations, but again provide no authority or explanation on how HAPA even applies to these violations, let alone how the statute's existence is "fatal" to this declaratory action, as they proclaim. Mot. at 11–12. Unlike the cases Defendants cite, there was no contested case hearing in this case,[7] nor have Defendants explained how the systemic violations of constitutional rights that Youth Plaintiffs allege could be addressed and resolved in an agency contested case hearing or through any other HAPA provision. *See, e.g., Juliana v.*

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[6] Dictum from *Ala Loop* stating that primary jurisdiction and exhaustion may apply in some cases, Mot. at 11, was raised in the context of an action brought against a private entity and did not address the context of this case involving *government violations* of *constitutional rights*, where these doctrines should not apply. *See*, *e.g.*, *Aged Hawaiians v. Hawaiian Homes Comm'n*, 78 Hawai'i 192, 202, 891 P.2d 279, 289 (2005) (rejecting defendant's primary jurisdiction and exhaustion arguments and maintaining that "[d]eference to an agency is particularly inappropriate in cases like this one, in which the constitutionality of the agency's rules and procedures is challenged").

[7] *See Puhonu v. Sunn*, 66 Haw. 485, 487, 666 P.2d 1133, 1135 (1983) (holding that plaintiffs could not pursue a collateral challenge via a separate declaratory judgment action after they already had an opportunity to litigate their individual welfare benefits in a contested case hearing); *In Hawaiian Elec. Co.*, 66 Haw. 538, 541, 669 P.2d 148, 151 (1983) (confirming that an appeal from a contested case hearing is based on the agency record under the standards set forth in HAPA).

United States, 947 F.3d 1159, 1167 (9th Cir. 2020) (holding that because HAPA's federal counterpart, the APA, "only allows challenges to discrete agency decisions the plaintiffs cannot effectively pursue their constitutional claims" challenging the "totality of various government actions" under that statute); *Aged Hawaiians*, 78 Hawai'i at 202, 891 P.2d at 289 ("The agency is not empowered to decide [constitutional] questions of law."). In sum, HAPA in no way bars this declaratory action challenging the totality of Defendants' actions that violate Youth Plaintiffs' constitutional right to a life–sustaining climate system. *See* Compl. ¶¶ 158–75.

IV. YOUTH PLAINTIFFS' CONSTITUTIONAL CLAIMS ARE NOT BARRED BY THE POLITICAL QUESTION DOCTRINE.

This case asks whether Defendants' operation of the state transportation system in a manner that exacerbates the climate emergency recognized by both the legislature and supreme court of Hawai'i violates Youth Plaintiffs' public trust rights and rights to a clean and healthful environment secured by the Hawai'i Constitution. Defendants invoke the political question doctrine to immunize these claims from judicial review, but the Hawai'i Supreme Court has recognized that interpreting the Hawai'i Constitution "is generally judicial fare." *Nelson v. Hawaiian Homes Comm'n*, 127 Hawai'i 185, 197, 277 P.3d 279, 291 (2012). "[A] court is to interpret constitutional questions as long as there do not exist uncertainties surrounding the subject matter that have been *clearly committed to another branch of government* to resolve." *Id.* (emphasis added); *see also Bd. of Educ. v. Waihe'e*, 70 Haw. 253, 263, 768 P.2d 1279, 1285 (1989) ("[T]he nonjusticiability of a political question is primarily a function of the separation of powers.") (quoting *Baker v. Carr*, 369 U.S. 186, 211 (1962)).

Defendants do not argue Youth Plaintiffs' constitutional claims are clearly committed to another branch of government, because the Hawai'i Supreme Court has made clear that "[a]s with other state constitutional guarantees, *the ultimate authority to interpret and defend the public trust in Hawai'i rests with the courts of this state*." *Waiāhole*, 94 Hawai'i at 143, 9 P.3d at 455 (emphasis added). *See also id.* (recognizing that the executive branch is "judicially accountable" for its public trust duties, and that "[t]he check balance of judicial review provides a level of protection against improvident dissipation of an irreplaceable res"); *Ching*, 145 Hawai'i at 176, 449 P.3d at 1174 ("The State's contention that [a public trust] case presents a

nonjusticiable political question is . . . without merit."). The other, lesser *Baker* factors[8] Defendants raise also do not remove from this Court's jurisdiction Youth Plaintiffs' claims raising justiciable questions of constitutional interpretation.

Defendants first contend that it is impossible for the Court to resolve Youth Plaintiffs' request for injunctive relief[9] "without an initial policy determination of a kind clearly for nonjudicial discretion." *Baker,* 369 U.S. at 217. Specifically, Defendants argue that injunctive relief requires the court to make policy judgments about "steps and timing necessary to achieve GHG reduction objectives." Mot. at 15. On the contrary, the legislature has already set these objectives and mandated that Defendants "decarboniz[e] the transportation sector," HRS § 225P-7, and "utilize the best available science, technologies, and policies to reduce greenhouse gas emissions," 2018 Haw. Sess. Laws Act 15, § 4, with the overarching goal of achieving the statewide Zero Emissions Target "as quickly as practicable, ***but no later than 2045***." *Id*. § 225P-5 (emphasis added); *see also id.* § 264-143(a)(9). The legislature has also dictated that after January 1, 2020, "agency plans, decisions, and strategies ***shall give consideration*** to the impact of those plans, decisions, and strategies on the State's ability to achieve" the Zero Emissions Target." *Id.* § 225P-5(b) (emphasis added). Youth Plaintiffs have adequately alleged that Defendants' conduct is inconsistent with achieving these statutory objectives, directives, and deadlines, *see, e.g.,* Compl. ¶¶ 125–78, and it is now incumbent upon this Court to decide whether Defendants' conduct correspondingly violates the Hawai'i Constitution. *See, e.g.,*

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[8] The first *Baker* factor, a textually demonstrable constitutional commitment of the issue to a coordinate political branch, is the most important indicator of a political question. *See Vieth v. Jubelirer*, 541 U.S. 267, 278 (2004) (plurality opinion).

[9] Defendants do not object to Youth Plaintiffs' requests for *declaratory* relief on political question grounds, but only argue that two of their requests for *injunctive* relief require the Court to make a policy decision. Mot. at 14–17. Yet, it is premature to decide whether and what form of injunctive relief may be appropriate in this case since a declaration on its own could terminate a controversy by establishing the contours of a constitutional duty and guiding a party's future conduct. *See, e.g., Ching*, 145 Hawai'i at 174, 449 P.3d at 1172; *see also Baker*, 369 U.S. at 198 ("Beyond noting that we have no cause at this stage to doubt the District Court will be able to fashion relief if violations of constitutional rights are found, it is improper now to consider what remedy would be most appropriate if appellants prevail at the trial."). Youth Plaintiffs' request for injunctive relief as a remedy in addition to declaratory relief does not render their claims nonjusticiable. *See* HRS § 632-3 ("Further relief based on a declaratory judgment may be granted whenever necessary or proper, after reasonable notice and hearing, against any adverse party whose rights have been adjudicated by the judgment.").

Kaho'ohanohano v. State, 114 Hawai'i 302, 335, 162 P.3d 696, 729 (2007) (holding that a determination of a constitutional violation "does not require an 'initial policy' consideration" that would bar judicial review); *Ching*, 145 Hawai'i at 176, 449 P.3d at 1174 (rejecting the State's argument that the political question doctrine bars judicial review of a claim that the State breached its public trust duties.).

Defendants also miss the mark in arguing that Youth Plaintiffs' request for a court-appointed special master expresses a "lack of respect" for a coequal branch of government. Mot. at 15. Again, Hawai'i's legislature and highest court have recognized the "climate emergency," Compl. ¶¶ 92, 94, and as Youth Plaintiffs have alleged, "[a]fter decades of legislative direction to address climate change, Hawai'i's per capita greenhouse gas emissions remain higher than 85% of the countries on earth, with emissions from the transportation sector constituting an ever-growing share of total emissions as other sectors of the economy pivot away from fossil fuels." Compl. ¶ 125. Defendants are correct that "[c]limate change is not a problem the legislature has proven incapable of handling." Mot. at 16. Rather, it is Defendants' systematic and ongoing conduct flouting legislative and constitutional climate mandates that presents the violations at issue in this case and requires a judicial remedy. Whether a special master is ultimately appropriate in this case is a question that can only be decided after a presentation of evidence, and seeking it as a remedy does not render Youth Plaintiffs' constitutional legal claims nonjusticiable.[10] *See* HRS § 632-3; *supra* note 9.

Finally, Defendants are wrong that there are not any "judicially discoverable and manageable standards" for the Court to measure the constitutionality of Defendants' conduct. *Baker,* 369 U.S. at 217. First, as to Youth Plaintiffs' public trust claim, judicial precedent "interpreting the State's constitutional trust obligations and the widely developed common law of trusts provide many judicially discoverable and manageable standards for determining whether the State breached its trust duties." *Ching*, 145 Hawai'i at 175, 449 P. 3d at 1173; *see also*

[10] The appointment of special masters is familiar to Hawai'i courts and can be a useful tool in cases with pernicious constitutional violations of this nature. *See, e.g., Office of Public Defender v. Connors*, 2020 WL 3032863, *1 (Haw. June 5, 2020) (appointing "a Special Master to work with the parties in a collaborative and expeditious manner to address the issues raised in the two petitions and to facilitate a resolution while protecting public health and public safety"); *see also Ching*, 145 Hawai'i at 184, 449 P.3d at 1182 ("[I]t is not uncommon for courts to issue generally-stated orders requiring government agencies to submit plans to remedy constitutional violations and then evaluate the adequacy of the plans prior to their implementation.").

Compl. ¶¶ 70–77. Second, article XI, § 9 provides that the constitutional standard is "defined by laws relating to environmental quality." The laws Youth Plaintiffs' Complaint alleges Defendants have violated, *see* Compl. ¶¶ 84–93, 186–87, set forth clear and measurable standards by which to gauge Defendants' conduct in this case. *Compare* HRS § 264-143(a) (emphasis added) (HDOT "shall endeavor" to "*[r]educe* carbon emissions and greenhouse gases to meet state renewable portfolio standards established in 269-92 and [a] zero emissions clean economy by 2045"), *with* Compl. ¶ 128 ("total transportation sector emissions in Hawai'i *increased* between 1990 and 2020"). There is no need for this court to "invent standards," Mot. at 16, as the judicially applicable standards are clearly set forth in legislative enactments and controlling judicial case law interpreting the relevant constitutional provisions. *See supra* note 1.

Defendants, for example, are required to "utilize the best available science, technologies, and policies to reduce greenhouse gas emissions," 2018 Haw. Sess. Laws Act 15, § 4, to achieve the Zero Emissions Target. Youth Plaintiffs have alleged that the substantial and increasing greenhouse gas emissions from Defendants' operation of the state transportation system contradicts what science dictates is necessary to reach that target. Specifically, "[t]o restore global atmospheric carbon dioxide concentrations to less than 350 ppm by 2100, stabilize Earth's energy balance and achieve the Zero Emissions Target, the best available science requires that the State *both* (1) reduce gross CO_2 emissions 90 to 100% from 1990 levels by 2045, *and* (2) sequester excess CO_2 already in the atmosphere by maximizing carbon sequestration capacity." Compl. ¶ 106; *see also id.* ¶¶ 101–05. Defendants acts and omissions that are increasing greenhouse gas emissions without any corresponding mitigation of current and historic emissions, *id.* ¶¶ 136–78, do not align with the best available science, which is itself an objective measurable standard.[11]

[11] Courts around the world acknowledge that climate change cases present justiciable claims that can be decided on the basis of scientific evidence. *See, e.g., Mathur v. Ontario*, O.N.S.C. 6918, ¶¶ 143–47, 267–68 (Can. Ont. Sup. Ct.) (2020), *available at* http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2020/20201112_CV-19-00631627_decision.pdf (holding that "the Applicants cite various facts that are capable of scientific proof and about which courts are capable of making determinations, based on expert evidence"); *Urgenda Found. v. States of the Netherlands*, Case No. 19/00135, ¶ 5.7.8 (Hoge Road, Dec. 20, 2019), *available at* http://climatecasechart.com/wp-content/uploads/sites/16/non-us-case-documents/2020/20200113_2015-HAZA-C0900456689_judgment.pdf (ruling that "each reduction of greenhouse gas emissions has a positive effect on combating dangerous climate change, as every reduction means that more

Hawai‘i’s established and enforceable constitutional mandates, case law recognizing that declaratory relief can terminate a controversy, and legislative action to address the “climate emergency” legally distinguish this case from the non-precedential cases cited by Defendants.[12] In *Aji P.*, the court determined that issuance of injunctive relief would require the court to “create a regulatory regime to replace one already enacted by the legislature and state agencies.” 480 P.3d at 189–91. Here, in contrast, Youth Plaintiffs seek to *enforce* existing legislative and constitutional mandates that the executive branch has persistently and systemically refused to implement, despite ever more specific decarbonization directives from the legislature. *Sagoonick v. Alaska*, 503 P.3d 777 (Alaska 2022), is likewise distinguishable because Youth Plaintiffs challenged what the court characterized as “constitutionally driven resource development,” a standard which “limit[ed] the judiciary’s role in implementing Alaska’s natural resources policies.” *Id.* at 782, 788. While both of those cases were wrongly decided,[13] neither

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room remains in the carbon budget[;] . . . no reduction is negligible”); *see also Juliana*, 947 F.3d at 1187 (Staton, J., dissenting) (“Here, the right at issue is fundamentally one of a discernable standard: the amount of fossil-fuel emissions that will irreparably devastate our Nation. That amount can be established by scientific evidence like that proffered by the plaintiffs.”).

[12] Defendants misstate that *Juliana* was dismissed on political question grounds. Mot. at 17; *Juliana*, 947 F.3d at 1174 n.9 (“Contrary to the dissent, we do not find this to be a political question.”). Because the *Juliana* majority opinion’s Article III redressability analysis focused exclusively on the plaintiffs’ request for injunctive relief in the form of a climate recovery plan, the plaintiffs have asked the district court for leave to amend their complaint to seek only declaratory relief, and that motion is currently pending. Mot. to Am., *Juliana v. United States*, No. 6:15-cv-01517-AA (D. Or. filed March 9, 2021).

[13] Beyond the factual and legal distinctions between the cases, the dissenting opinion in *Sagoonick*, and the Chief Justice’s dissent to the Washington Supreme Court’s decision declining review of the Court of Appeals decision in *Aji P.*, are more in line with Hawai‘i jurisprudence recognizing the constitutional right to a life–sustaining climate system and the need for judicial interpretation and enforcement of constitutional rights. *See Aji P. v. State*, 497 P.3d 350, 351 (Wash. 2021) (González, C.J., dissenting) (“This case is an opportunity to decide whether Washington’s youth have a right to a stable climate system that sustains human life and liberty.”); *Sagoonick*, 503 P.3d at 811 (Maasen, J., dissenting) (“In my view, the law requires that the State, in pursuing its energy policy, recognize individual Alaskans’ constitutional right to a livable climate. A declaratory judgment to that effect would be an admittedly small step in the daunting project of focusing governmental response to this existential crisis. But it is a step we can and should take.”); *see also Held v. State of Montana*, No. CDV-2020-307, *22 (Mont. First Jud. Dis. Ct. Lewis & Clark Cnty., Aug. 4, 2021) (Order on Motion to Dismiss) (finding youth plaintiffs’ request for declaration that state’s energy policy violates state constitutional right to clean and healthful environment would not violate political question doctrine), *available at*

Washington's nor Alaska's constitution enshrines a judicially enforceable constitutional right to a clean and healthful environment that expressly provides that "any person may enforce this right," or includes a public trust mandate directing the State to "conserve and protect . . . all natural resources." The political question doctrine does not preclude this Court from reviewing Youth Plaintiffs' constitutional claims, which are based on the Hawai'i Constitution and the specific factual circumstances of this case that have not yet been reviewed by any court.

V. YOUTH PLAINTIFFS HAVE STANDING UNDER THE DECLARATORY JUDGMENT ACT.

Defendants' argument that Youth Plaintiffs must show that "HDOT has caused or will imminently cause them harm and that succeeding in this case would redress that harm," Mot. at 17, misstates the law and neglects to mention that the Hawai'i Supreme Court has already held that these requirements *do not apply* to declaratory actions like this one. As the court made clear in *Tax Foundation v. State*, 144 Hawai'i 175, 439 P.3d 129 (2019), Hawai'i court's "are not subject to the case and controversy subject matter jurisdiction limitation of federal courts," and plaintiffs seeking declaratory relief under HRS § 632-1 "*need not satisfy the three-part 'injury in fact' test to have standing*," including the two factors of "causation" and "redressability" that Defendants misguidedly try to argue here. 144 Hawai'i at 189, 191, 439 P.3d at 141, 143 (emphasis added). Rather, the court held that declaratory relief under HRS § 632-1 is available:

> (1) where antagonistic claims exist between the parties (a) that indicate imminent and inevitable litigation, or (b) where the party seeking declaratory relief has a concrete interest in a legal relation, status, right, or privilege that is challenged or denied by the other party, who has or asserts a concrete interest in the same legal relation, status, right, or privilege; and (2) a declaratory judgment will serve to terminate the uncertainty or controversy giving rise to the proceeding.

Id. at 189, 439 P.3d at 141.

Here, Defendants do not contest that antagonistic claims exist as to whether Youth Plaintiffs' public trust rights and rights to a clean and healthful environment encompass a life–sustaining climate system, and whether Defendants, by and through their operation of the state transportation system, have violated such rights. Compl. at 69, ¶¶ A(1)–(4). Nor do Defendants

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http://climatecasechart.com/wp-content/uploads/sites/16/case-documents/2021/20210804_docket-CDV-2020-307_order.pdf. The Court should look to the analysis by those justices and judges as far more persuasive and aligned with constitutional law.

claim the parties lack concrete interests in these legal rights. *See* Compl. ¶ 109 (Youth Plaintiffs have a concrete interest in protecting constitutional rights because violations of these rights "disproportionately harm children and youth"); *id*. ¶¶ 56–63, 178 (Defendants have a concrete interest in alleged rights that determine how they should establish, maintain, and operate the state transportation system). In *Tax Foundation*, the court held that the plaintiff in that case had a concrete interest in the disbursement of tax funds, "based on its historical purpose as a government financial accountability watchdog." 144 Hawai'i at 154–55, 539 P.3d at 202–03. Plaintiffs in this case have alleged far more personal and concrete interests here. *See also* Compl. ¶¶ 11–52, 109–124.

Finally, a declaration from this Court will also terminate the controversy as to the existence, scope, and violation of Youth Plaintiffs' rights and Defendants' duties. *See*, *e.g.*, *Ching*, 145 Hawai'i at 174, 449 P.3d at 1172 ("[A] declaration regarding whether the State has breached [its public trust] duty would terminate the controversy by clarifying the contours of that duty."). Injunctive relief would similarly terminate the controversy as it would ensure that Defendants fulfill their statutory and constitutional responsibilities. *See Kaho'ohanohano*, 114 Hawai'i at 330, 162 P.3d at 724. In sum, Youth Plaintiffs readily satisfy the standing test for declaratory relief, which this Court may grant "whether or not consequential relief is, or at the time could be, claimed." HRS § 632-1.[14]

VI. YOUTH PLAINTIFFS ALLEGE A RIPE, ACTUAL CONTROVERSY.

Defendants' assertion that Youth Plaintiffs only "speculate" about future violations by HDOT, Mot. at 19–20, ignores the plethora of allegations in the Complaint detailing ongoing

[14] The case Defendants rely on, *Sierra Club v. Haw. Tourism Auth.,* 100 Hawai'i 242, 59 P.3d 877 (2002), is not only inapplicable legally, but factually as well. Unlike that case, Youth Plaintiffs here have shown the "nexus" between Defendants' conduct and increases in greenhouse gas emissions from a state transportation system that dictates and constrains transportation options and decisions and promotes increasing fossil-fuel use and emissions. *See*, *e.g.*, Compl. ¶¶ 59, 136, 141–42, 159–61, 163, 165. Thus, while causation and redressability issues are inapplicable under Hawai'i law, Youth Plaintiffs would satisfy any such requirements. Youth Plaintiffs have alleged that Defendants' actions exacerbate the climate crisis and harms to Youth Plaintiffs, and Youth Plaintiffs' request for declaratory relief, and if needed, injunctive relief, are legally recognized to satisfy redressability. *See*, *e.g.*, *Kaho'ohanohano*, 114 Hawai'i at 330, 162 P.2d at 724 (declaratory and injunctive relief to ensure that a constitutional mandate would be implemented suffices for redressability).

legal violations and illustrates a misapprehension of climate science. Youth Plaintiffs repeatedly allege active, ongoing examples of how Defendants' conduct in administering the state transportation system exacerbates greenhouse gas emissions today and in the foreseeable future. *See, e.g.*, Compl. ¶¶ 140 ("Since 2008, none of the stated targets, either for overall reductions of greenhouse gas emissions from the transportation sector, or for the various key strategies for enabling and achieving these reductions, have been met."), 143–44 (strategies identified in the 2011 Hawai'i State Transportation Plan that would reduce greenhouse gas emissions have not been implemented). The State's own reports document that transportation sector emissions are headed in the wrong direction and are projected to *increase* through 2030. Compl. ¶¶ 4, 5, 108, 132, 136–78. Youth Plaintiffs thus allege Defendants are breaching their public trust duties and Youth Plaintiffs' rights to a life–sustaining climate system through their operation of the transportation system. *Id.* ¶¶ 180-184. *See Ching*, 145 Hawai`i at 173, 449 P.3d at 1171 (assertion that State breached its trust duties owed to beneficiaries meets actual controversy requirement of HRS § 632-1(b)). These violations present an active, not hypothetical, controversy that this Court has the authority to resolve. *See Tax Found*, 144 Hawai'i at 201, 439 P.3d at 153 (2019) (recognizing jurisdiction over an "actual controversy" under § 632-1(b)).[15]

As a scientific matter, given the "climate emergency," the severity of which can be measured by Earth's energy imbalance, Compl. ¶¶ 99–102, "every additional ton of CO_2 emitted into the atmosphere makes the climate change problem worse and places the environmental, economic, and existential burdens of climate change on these Youth Plaintiffs and future generations." Compl. ¶ 105. Therefore, Defendants' present-day conduct is also exacerbating *future* harms and inequities to Youth Plaintiffs, which would result in constitutional violations this court has the authority to prevent. *See Kaho'ohanohano,* 114 Hawai'i at 332, 162 P.2d at 726 (declaration that future conduct of "skimming" investment earnings will violate the constitution would resolve controversy in the case); *see also Waiāhole*, 94 Hawai'i at 143, 9 P.3d at 155 ("The beneficiaries of the public trust are not just present generations but those to

[15] As explained in the previous section regarding standing, Youth Plaintiffs have also alleged "antagonistic claims" and a "concrete interest" in a legal right, which provide an independent basis for declaratory relief, apart from an "actual controversy," that Defendants have ignored. *See* HRS § 632-1(b)*; see also Kau v. City & County of Honolulu*, 104 Hawai'i 468, 474 n.6, 92 P.3d 477, 483 n.6 (2004) (noting that the existence of an "actual controversy" is one of three circumstances for declaratory relief under HRS § 632-1(b)).

come."); *MECO*, 150 Hawai'i at 538 n.15, 506 P.2d at 202 n.15 (recognizing that climate change "harms present and future generations").

While the Zero Emissions Target is designed to be achieved "as quickly as practicable, but no later than 2045," HRS § 225P-5(a), it is imperative, and not "speculative," to adjudge and declare whether Defendants' conduct today is consistent with achieving this target in the prescribed timeframe. In fact, the State's own documents establish that it is not nearly on track to achieve the Zero Emissions Target, largely because of increasing emissions from the transportation sector. Compl. ¶¶ 3 (citing Hawai'i Department of Health ("HDOH") Report finding that greenhouse gas emissions will only be 30% lower than 2016 levels in 2045), 130 (Figure 5 from HDOH Report showing the transportation sector currently accounts for majority of statewide greenhouse gas emissions). The Court is also properly called to adjudge and declare whether Defendants' conduct unlawfully shifts the burden to achieve the Zero Emissions Target on future generations. *Kaua'i Springs, Inc. v. Planning Comm'n*, 133 Hawai'i 141, 173, 324 P.3d 951, 983 (2014),(maintaining that "[w]hen an agency is confronted with its duty to perform as a public trustee under the public trust doctrine, it must preserve the rights of present and future generations"); *see also* Compl. ¶ 127 (explaining that due to the limited greenhouse gas emission reductions to date, Hawai'i now needs to reduce emissions 19 times faster than it did during the past 17 years). By Defendants' logic, there would be no live controversy until 2045, at which point there would also no longer be any effective remedy available to these Youth Plaintiffs, and Defendants would have been allowed to thwart their own climate mandates for decades.

This case is nothing like the *Kau* case Defendants cite, which involved an expiration date for a residential lease. *See* 104 Hawai'i at 483–84, 92 P.3d at 474–75. Because it is the accumulation of greenhouse gas pollution in the atmosphere ***over time*** that results in Earth's energy imbalance, Compl. ¶ 99, there is an actual controversy ***now*** as to whether Defendants' ongoing conduct that exacerbates Earth's energy imbalance makes it more difficult, expensive, and potentially impossible to achieve the Zero Emissions Target "as soon as practicable, but no later than 2045." HRS § 225P-5. There is no question the transition will take time, but these Youth Plaintiffs have presented the Court with an actual controversy with respect to how Defendants' conduct has been and continues to be inconsistent with existing legal requirements designed to achieve that transition. The nature and urgency of the climate crisis, the gravity of the injuries these Youth Plaintiffs are already experiencing, the State's own documents finding

that it is not on track to achieve the Zero Emissions Target, and the State's long-standing inability to achieve its own legislatively mandated emissions reduction goals and strategies, establish that this case presents "uncertainty and insecurity attendant upon controversies over legal rights," justifying a judicial remedy. HRS § 632-6.

VII. CONCLUSION[16]

One argument conspicuously missing from Defendants' motion to dismiss is any dispute that these 14 Youth Plaintiffs are experiencing grave injuries to their ability to live healthy lives in Hawai'i now and into the future. Instead, Defendants focus on how they can further bend the law to grant themselves unchecked discretion and immunity from judicial review, even in the face of overwhelming factual allegations documenting their longstanding disregard of legal duties and mandates to mitigate climate pollution from the state transportation system. The "preemptive and protective action" the Hawai'i's legislature has recognized is necessary to avert climate "disaster," should include this Court stepping in to resolve this controversy, and allowing the Youth to seek redress for violations of their constitutional rights. S. Con. Res. 44, 31st Leg. (2021). The time for Defendants' delaying and shirking their legal obligations, while worsening the harms to Hawai'i's children and depriving them of their futures, is over. For all the reasons set forth above, Youth Plaintiffs respectfully request that this Court deny Defendants' motion to dismiss and move this case forward without delay, at this historical juncture when the courts' constitutional role has never been more vital to our democracy and fundamental rights.

DATED: Honolulu, Hawai'i, September 16, 2022.

/s/ Leinā'ala L. Ley
ISAAC H. MORIWAKE
LEINĀ'ALA L. LEY
EARTHJUSTICE

ANDREA RODGERS (*Pro Hac Vice)*
KIMBERLY WILLIS (*Pro Hac Vice)*
OUR CHILDREN'S TRUST

Attorneys for Plaintiffs

[16] The Court should reject Defendants' premature and piecemeal attempt to "strike" Youth Plaintiffs' request for attorneys' fees. Mot at 20. The Court can address any such request at the relevant and appropriate time, based on a full and fair opportunity for briefing in relation to such a request.