



Held v. State of Montana: Closing Argument

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Thank you, your Honor. May it please the Court: I want to begin by thanking you and the Court's staff for accommodating all of us over the past week and making this courtroom accessible to the broader public.

Taleah said that it was a privilege for her to be able to share her story in this courthouse: a place of public and legal significance. This is a sentiment echoed by all of the youth Plaintiffs and they wanted you to know how honored they were to participate in this venerated process and to finally have the chance to be heard after three long years.

This case is about 16 brave Montanans: Rikki, Grace, Eva, Badge, Mica, Ruby, Lilian, Sariel, Taleah, Georgi, Kian, Claire, Olivia, Lander, Nate, and Jeffrey, and the harms they have each endured at the hands of their own government. After hearing from world-renowned experts on climate science and medical professionals, there is no doubt that Montana should be protecting these young people and future generations to come.

A stable climate system is integral to each and every one of the constitutional rights that have been implicated in this proceeding. And Plaintiffs have established—through overwhelming evidence—that their rights have been violated. Central to this violation is the MEPA Limitation and its implementation, forcing Montana's agencies to turn a blind eye to climate change's catastrophic impacts and the mounting greenhouse gas emissions driving these unnatural, wholly avoidable injuries.

You've heard the state say this is a boring case about a procedural law. But to the contrary, this is about the Plaintiffs' lives, their livelihoods, and their future.

Like other monumental constitutional cases before it, *Held v. State of Montana* comes to this Court because of a pervasive, systemic infringement of rights. These 16 young people shouldered the responsibility to come here to share intimate stories of their harms; they don't ask for money, but instead ask only that their government embrace its constitutional responsibility to alleviate the harm of its own conduct. The state argues that the climate crisis is a global problem. Plaintiffs localize this harm in their backyards of felled, diseased trees; the melting of majestic glaciers; big skies full of choking smoke; and rivers that run dry. The climate crisis is at home in Montana and it diminishes the lives of each and every one of the Plaintiffs.

The Plaintiffs spoke of their deep love for Montana and said this case is for every Montanan, and the shared values of the people of this state. They said they are just 16 voices speaking for thousands.

They said that this case is about responsibility and opportunity. They know the transition to clean, renewable energy is coming – but they spoke of how proud they would be if it was their state that led the transition. And they know what their experts and the IPCC say with “very high confidence:” the window is rapidly closing to address climate change.

The Plaintiffs acknowledged that the work to stop and reverse climate change will be a lifetime journey, but they are asking this Court for help. They are asking this Court to alleviate their harms, harms the Court heard detailed last week.

They know the rest of the world is watching, and that future generations will look back on this historic trial. They say their case, *Held v. Montana*, is not just about past harms suffered, but about hope for the future. It is a case that will lay the groundwork for other children to enjoy the full wonder of this world.

Clean and Healthful Environment

Over the course of this trial Plaintiffs’ experts, including Montana’s top climate scientists, Drs. Steven Running and Cathy Whitlock, described how Montana’s once clean and healthful environment is experiencing unprecedented degradation. For Grace, Taleah, Claire, and Kian, this means that the forests, glaciers, and rivers they depend on are being depleted. Claire told the Court how her well-being and ability to walk is deeply intertwined with the quality of Montana’s clean and healthful environment. The abundant evidence shows that Defendants’ promotion of fossil fuels, while ignoring the attendant climate impacts, violates Plaintiffs’ fundamental right to a clean and healthful environment, secured by Article II, Section 3 and Article IX, Section 1—which stand as “anticipatory and preventative.” Defendants presented no evidence to dispute Plaintiffs’ showing, nor did they provide any evidence of a compelling state interest that would justify the infringement of this right and overcome strict scrutiny. This is in the face of the MEPA Limitation which affirmatively prohibits agencies from gathering information on impacts that have been proved to be causing grievous harms to the Plaintiffs; without this limitation, Defendants told the Court, MEPA would allow them to make decisions informed by the consequences of climate change.

Public Trust

The Court also heard expert testimony from renowned ecologists Dr. Daniel Fagre and Dr. Jack Stanford, who explained how Glacier National Park’s 26 remaining glaciers sit at the top of the water tower, dangerously close to depletion. Water is the quintessential

public trust resource, but rising temperatures are melting Montana's glaciers, and changing precipitation trends are fundamentally altering the water tower and the vast ecosystems that depend on it. These changes threaten the ability of Plaintiffs like Georgi, Lander, and Badge to continue fishing and rafting on Montana's once pristine rivers that have become sickly hot or slowed to a trickle. Again, the evidence shows that Defendants' ongoing promotion of fossil fuels, while ignoring greenhouse gas emissions and climate impacts, is substantially impairing Montana's public trust resources in violation of Article IX, Sections 1 and 3. Not only did Defendants fail to present any evidence of a compelling state interest that would justify the infringement of the state's public trust resources and overcome strict scrutiny—they did not even mention the public trust.

Dignity

During the trial we also heard Indigenous Plaintiffs describe how Montana's changing climate is impacting their ability to tell seasonally attuned Salish creation stories; how ceremonies central to Crow traditions are disturbed by extreme heat and smoke; and how the traditional food sources of many tribes are made scarce by drought. Mr. Michael Durglo Jr. shared how Montana's changing climate was interrupting nature's cycles, cycles that have been observed by Indigenous people and passed down through oral traditions for millennia. These tribal practices, which are an integral part of Saniel's, Ruby's, and Lillian's cultural dignity and spirituality, are being imperiled by changing precipitation patterns and declining snowpack. Plaintiffs have presented evidence that their very dignity, their intrinsic worth, and their right to practice cultural and spiritual beliefs under Article II, Section 4 is being violated by Defendants' ongoing promotion of fossil fuels, while ignoring greenhouse gas emissions and the worsening climate impacts. Defendants presented no evidence of a compelling state interest that would justify this infringement of the right to dignity and overcome strict scrutiny.

Equal Protection

Meanwhile unrefuted testimony from medical experts Dr. Lori Byron and Dr. Lise Van Susteren shows that children, including these Plaintiffs, are disproportionately harmed by climate change and will face life-long hardships without urgent steps to address the cause of their injuries. Article II, Section 15 explicitly protects children under the age of 18 and the evidence before the Court demonstrates that children deserve protected status in cases where government conduct harms them, including here, where the state approves every fossil fuel permit with zero consideration of the harm to children. This evidence compels a finding that Plaintiffs are a protected class, and Defendants' ongoing promotion of fossil fuels, while ignoring the climate impacts, is violating their fundamental rights to equal protection under Article II, Section 4. Defendants presented no evidence of a compelling state interest that would justify the infringement of this fundamental right to equal protection and overcome strict scrutiny.

Health, Safety, and Happiness

We've also heard testimony from Plaintiffs, including Olivia, Eva and Rikki, about how their right to health, safety, and happiness, secured by Article II, Section 3, is being infringed as a consequence of the climate crisis. Eva's home and community remains at risk from extreme flooding events. Rikki has had to work in 110-degree heat and smoke-filled skies on her family's ranch. Increased pollen count causes allergic reactions so strong that Olivia's eyes can be bloodshot and swollen for weeks at a time. These are just a few examples of the many injuries evidenced to violate Plaintiffs' right to health, safety, and happiness. Yet again, Defendants presented no evidence of a compelling state interest that would justify the infringement of these fundamental rights and overcome strict scrutiny.

In order to acknowledge the full range of harms and constitutional injuries these Plaintiffs endure, it is critical that the Court address each of Plaintiffs' constitutional claims. These are distinct constitutional injuries, and each should be declared and remedied.

In response, Defendants argue that Montana's GHG emissions don't matter. But irrefutable expert testimony affirms that Montana's greenhouse gas emissions are substantial; Montana's contribution to anthropogenic climate change harms the Plaintiffs; and the impacts of Montana's emissions are both local and immediate as well as global and long-lasting. Every ton matters. Defendants have presented no scientific evidence to the contrary. Defendants' sole witness to discuss GHG emissions, Dr. Terry Anderson, merely calculated, albeit incorrectly, Montana's percentage of total global greenhouse gas emissions per year.

On the other hand, Plaintiffs' expert testimony makes clear that without science-based steps to reduce Montana's GHG emissions, the harms Plaintiffs are already experiencing will just keep getting worse.

But the evidence also makes clear that it is not too late to avoid the most catastrophic and irreversible climate impacts. As Dr. Jacobson explained, Montana can meet all its energy needs with renewable energy sources, while at the same time reducing energy costs, saving lives, and cleaning up Montana's skies. Solutions to the climate crisis are available right now and the only thing standing in the way are government laws that perpetuate Montana's fossil fuel-energy system.

Stable Climate System

Plaintiffs are asking this Court to declare that a stable climate system is fundamental:

to the protection of their rights to a clean and healthful environment;
to the preservation of public trust resources;
to protect their rights for equal protection and individual dignity; and
to seek safety, health and happiness.

Constitutional Standard

As Constitutional Delegate Mae Nan Ellingson said in 1972, the Constitution would not detail what “clean” or “healthful” meant, but she guaranteed that the courts could tell us how to understand and enforce this “anticipatory and preventative” provision. This Court heard undisputed testimony from multiple experts that in order to restore Earth’s Energy Balance and secure a stable climate system, the atmospheric concentration of carbon dioxide in the atmosphere must be reduced to no more than 350 parts per million by 2100. Given this uncontroverted evidence, this Court should declare that 350 ppm is the constitutional standard necessary to protect a stable climate system. Declaring this constitutional standard will provide a clear target for Defendants when conducting their MEPA analyses and making future energy permitting decisions under their statutory authority.

Final Judgment

This Court’s final judgment should conform to the evidence presented at trial, which shows that both the 2011 and 2023 versions of MEPA are unconstitutional. It also shows that the provision of SB 557, which Defendants have interjected into this case, and which prohibits courts from vacating or voiding permits based on GHG emissions or climate change, is unconstitutional.

Defendants would have this Court believe that they have no authority to implement the permitting statutes to include an analysis of climate change or GHG emissions necessary to abide by the constitutional mandate to protect a clean and healthful environment. Such a construction is absurd and would render the permitting statutes unconstitutional. Defendants must either have discretion to deny or condition permits when environmental reviews reveal harms that arise to the level of constitutional violations, or the permitting statutes themselves are unconstitutional.

In closing, your Honor, it’s worth remembering other times in our nation’s history when the political process didn’t work to protect people’s basic human rights. Segregation, women’s rights, equal and adequate public schooling, marriage—time and

time again, the political will of powerful majorities was struck down by courts, based on the compelling evidence before them, courageously correcting the injustices thrust on the people. Today, the injustice squarely before this Court is the proven harms of these young people wrought by climate change caused by a fossil fuel-based energy system imposed and perpetuated through the law.

The state says this fight is reserved for the legislature, but we live in a constitutional democracy where fundamental rights are not subject to elections and Defendants do not have the discretion to authorize unconstitutional conduct. Montana's long-standing energy system, which the MEPA Limitation is a part of, violates Plaintiffs' fundamental constitutional rights, and when constitutional rights are infringed, the Courts have a duty to provide redress.

Today, before you are 16 young Montanans who are relying on this Court to grant them necessary, equitable relief. This Court can and should declare their equal right to a clean and healthful environment, dignity, health, safety, and happiness. And this Court can and should enjoin any state action or law that violates Plaintiffs' fundamental rights. In this ruling, Plaintiffs find relief and hope in their future in this great state of Montana.

Thank you, Your Honor.