IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 23-0575

RIKKI HELD, *et al*.,

Plaintiffs and Appellees,

v.

STATE OF MONTANA, *et al*.,

Defendants and Appellants.

BRIEF OF AMICUS CURIAE THE FRONTIER INSTITUTE, THE BUCKEYE INSTITUTE, MONTANA ASSOCIATION OF OIL, GAS, & COAL COUNTIES, MONTANA COAL COUNCIL, MONTANA MINING ASSOCIATION, MONTANA TAXPAYERS ASSOCIATION, UNITED PROPERTY OWNERS OF MONTANA, and WESTMORELAND MINING LLC

On appeal from the Montana First Judicial District Court, Lewis and Clark County Cause No. CDV 2020-307, the Honorable Kathy Seeley, Presiding

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INTERESTS OF THE AMICI CURIAE[1]

The Frontier Institute is an independent research and educational institution with the mission to keep the spirit of the western frontier alive with sound public policy and education programs that empower Montanans to be pioneers, innovators and risk takers. To those ends, the Frontier Institute is dedicated to upholding the separation-of-powers requirements of the United States and Montana Constitutions that foster democratic accountability and sound public policy.

The Buckeye Institute is an independent research and educational institution—a think tank—whose mission is advancing free-market public policy in the states through timely and reliable research. The Buckeye Institute also works to protect the rule of law and individual liberties against government overreach.

The Montana Association of Oil, Gas, & Coal Counties is a non-profit corporation comprised of county governments and supportive affiliate members that have a vested interest in the development of Montana's oil, gas, and coal resources. The MAOGCC is supportive of Montana's oil, gas, and coal industries, the jobs they create, and the critical revenue they provide to local governments that enables them to provide Montana citizens with needed services.

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[1] The Court granted the Frontier Institute's motion for leave to file an amicus brief, which provided that Frontier's brief may be joined by other amici sharing its interest and position.

The Montana Coal Council is a non-profit association whose membership includes all major coal mine operators, holders of Montana coal reserves, those who ship coal, utilities who use coal, and numerous suppliers and businesses, directly and indirectly, involved in the coal industry. It believes that the trial court's decision undermines the separation-of-powers by intruding on the Legislature's policymaking functions and that state climate change policy must be holistic, recognizing technological limitations and economic viability, eschewing "too good to be true" solutions, and arbitrary and unrealistic mandates.

The Montana Mining Association is a trade association dedicated to protecting and promoting responsible mining in the State of Montana.

The Montana Taxpayers Association represents businesses and trade associations both large and small from a wide range of industries, including manufacturing, agriculture, transportation, energy, utilities, telecommunications, healthcare and natural resources. The MTA is concerned that the decision below will jeopardize the establishment of new industries in Montana that will generate new tax revenue and decreasing the burden on existing property taxpayers.

United Property Owners of Montana advocates for Montana farmers and ranchers. UPOM is dedicated to protecting the rights of all Montanans to own, use, and enjoy private property and believes that affordable energy, especially in agriculture, is the bedrock of economic growth. Limiting the productive use of

Montana's natural resources slows economic growth, makes our state poorer, resulting in worse outcomes for our environment in the long run.

Westmoreland Mining LLC is a cornerstone of America's energy-generation sector with a track record of innovation and service over 150 years. It seeks to provide sustainable and responsible solutions so that the world can transition reliability to a new and multi-faceted energy future and operates the Rosebud, Savage, and Absaloka mines in Montana.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case, and many others like it, present the question of what role the courts should play in developing public policies to address global climate change. The answer is none. Climate change is a global policy issue and must necessarily be addressed by political actors who have the power to forge national and global policy responses that account for the public benefits of energy security and affordability along with the costs of adaptation to potential changes in climate. This weighing of incommensurable public interests—economic growth and prosperity, national security, the incidence of potential adaptation costs, and many more—is inherently a question of public policy, suited only for the political branches.

The pleadings in this case confirm as much. The basis of the Plaintiff's suit is their claim that "[t]he best available science today prescribes that global

atmospheric CO_2 concentrations must be restored to no more than 350 ppm by 2100 (with further reductions thereafter) in order to stabilize Earth's energy balance and restore the climate system on which human life depends," and that "[t]wo steps are required to reduce the atmospheric CO_2 concentration to 350 ppm by 2100 (1) reducing CO_2 emissions; and (2) sequestering excess CO_2 already in the atmosphere." Compl. at ¶¶ 201, 203. They acknowledge that there are "various pathways" to achieve those ends, including global emissions reductions and "improved land management practices and protection of forests and soils." *Id*. at ¶ 203.

Effectively, plaintiff's position is that any policy they consider to be inconsistent with their policy goals causes them personal injury supporting judicial intervention. *See, e.g.,* Compl. at ¶¶ 118–20, 216, 221. But Plaintiffs concede that the danger of which they complain cannot be eliminated by any action taken by Montana alone. Compl. at ¶ 205. After all, according to EPA, total carbon dioxide for the U.S. in 2020 was 6,026 million metric tons of CO_2 equivalent and Montana's total emissions was 48.8 million metric tons of CO_2 equivalent—less than 1 percent of national emissions.[2] Global carbon dioxide emissions in 2020

[2] EPA, Greenhouse Gas Inventory Data Explorer, https://cfpub.epa.gov/ghgdata/inventoryexplorer/index.html.

was 52.59 billion tons of CO_2 equivalent.[3] So Montana is responsible for approximately zero percent of total global emissions. Notably, the remedy in this case does not affect those emissions *at all*, but just marginal emissions associated with new projects, which would be a much smaller number.

No judicial body is capable of adjudicating the multifarious issues raised by global climate change and there is no court that can bind the international community as a whole to its decisions. In the United States, there is the additional issue that resolution of such politically charged issues is constitutionally reserved to the elected branches of government, both on the federal and state levels. Montana's constitution requires its courts to apply the same fundamental justiciability requirements that limit the authority of federal courts, including application of "political question" doctrines and standing requirements.

The complex issues raised by climate change fall afoul of both of these legal doctrines. Courts can only adjudicate actual "cases" or "controversies." This requires, at a minimum, that Plaintiffs allege and prove standing—an individual injury, caused by Defendants' actions (and not those of society in general), which can be remedied by relief the court can lawfully provide. But all climate change cases rely on harms that occur because of changes in weather that are believed to

[3] Our World in Data, Greenhouse gas emissions, https://ourworldindata.org/greenhouse-gas-emissions.

result from the Earth's warming on account of anthropogenic emissions of greenhouse gases ("GHGs"), particularly carbon dioxide. If this is correct, then those responsible for climate change include every human who has lived on the planet over the past two or three hundred years, if not longer, and who have cooked their food and heated their homes through combustion, either of wood or of "fossil fuels" such as coal, oil, and gas. All of these sources of energy release carbon dioxide into the atmosphere. Indeed, Plaintiffs themselves claim: "The Earth will continue to warm in response to the atmospheric concentrations of GHGs caused by past emissions, as well as future emissions. It is the cumulative effect of GHG emissions that causes climate disruption." Compl. at ¶ 106.

Consequently, there is no set of individuals who can identify an injury peculiar to themselves that is not shared by all. Nor are there any individuals or entities who can be identified as the principal, or even a meaningful, cause of climate change. As a result, there is no judgment or order any court can enter that will stop or reverse climate change. Because no one has standing, the best course this Court can take is to vacate the lower court's decision and remand with instructions to dismiss.

ARGUMENT

State and federal courts in Montana require that a plaintiff have standing to pursue a claim. As this Court recently explained: "Montana courts, like federal

courts, may decide only justiciable controversies. This limitation prevents courts from issuing decisions about purely political or theoretical disputes. Several doctrines enforce the requirement for a true dispute, including the standing doctrine." *350 Montana v. State*, 2023 MT 87, ¶ 14, 412 Mont. 273, 529 P.3d 847 (citation omitted). Indeed, this is so much the case that "federal precedents interpreting the Article III requirements for justiciability are persuasive authority for interpreting the justiciability requirements of Article VII, Section 4(1)" of the Montana Constitution. *Plan Helena, Inc. v. Helena Regional Airport Authority Bd.*, 2010 MT 26, ¶ 6, 355 Mont. 142, 226 P.3d 567. *See also, Heffernan v. Missoula City Council,* 2011 MT 91, ¶ 30 n.3, 369 Mont. 207, 255 P.3d 80 (same); *Chovanak v. Matthews*, 120 Mont. 520, 525–26, 188 P.2d 582 (Mont. 1948) (citing federal cases as authority).

These most basic requirements for the exercise of judicial power are "built on separation-of-powers principles, [which] serve[] to prevent the judicial process from being used to usurp the powers of the political branches." *Clapper v. Amnesty Intn'l USA*, 568 U.S. 398, 408 (2013); *see also Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (standing is a "doctrine developed in our case law to ensure that federal courts do not exceed their authority as it has been traditionally understood"); *Warth v. Seldin*, 422 U.S. 490, 498 (1975) (standing requirements are "founded in concern about the proper—and properly limited—role of the courts

in a democratic society"); *Larson v. State*, 2019 MT 28, ¶ 18, 394 Mont. 167, 434 P.3d 241 ("Justiciability is a related, multi-faceted question . . . based on the constitutional 'case' and separation of powers provisions of Article III, Section 1, and Article VII, Section 4 of the Montana Constitution and related prudential policy limits.").

A plaintiff must prove three elements for standing: "The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc.* 578 U.S. at 338 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992)); *see also Clapper*, 568 U.S. at 409 (plaintiff's "injury must be 'concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling"); *Larson*, 2019 MT at ¶ 46 ("A plaintiff has legal standing…only if (1) the claim is based on an alleged wrong or illegality that has in fact caused, or is likely to cause, the plaintiff to personally suffer specific definite, and direct hard to person, property, or exercise of rights and (2) the alleged harm is of a type that available legal relief can effectively alleviate, remedy, or prevent.").

Plaintiffs "bear[] the burden of establishing these elements," 568 U.S. at 409, and they have not done so. Their claims are premised on nothing more than a generalized grievance that is within the power of no court to adjudicate or remedy.

Their crusade to establish their preferred climate change policy presents no justiciable issue and must be directed instead to the political branches.

I. Plaintiffs Cannot Show a Legally Cognizable Injury in Fact

A plaintiff must show that he or she has suffered an "injury in fact," defined as "an invasion of a legally protected interest that is concrete and particularized and actual or imminent not conjectural or hypothetical." *Spokeo, Inc.*, 578 U.S. at 339 (cleaned up). An injury is "particularized" if it "'affect[s] the individual in a personal and individual way.'" *Id.* (quoting *Lujan*, 504 U.S. at 560). Environmental plaintiffs may "adequately allege injury in fact when they aver that they use the affected area and are persons 'for whom the aesthetic and recreational values of the area will be lessened' by the challenged activity." *Friends of the Earth v. Laidlaw Env. Services*, 528 U.S. 167, 183 (2000) (citing and quoting *Sierra Club v. Morton*, 405 U.S. 727, 735 (1972)). But they must still prove that they are harmed in some manner distinct from society as a whole.

Thus, in *Laidlaw* plaintiffs sued a company for discharging pollutants into a river they (or their membership) used, close to the source of pollution, recreationally and alleged that they could no longer do so safely because of the discharge. *See also WildEarth Guardians v. Bureau of Land Management ("BLM")*, 870 F.3d 1222, 1231 (10th Cir. 2017) (plaintiffs had standing to challenge BLM leases as they established injury in fact based upon individual use

of "Thunder Basin National Grasslands, which would be adversely affected by the mining leases," separate and apart from any claimed climate change injury, citing *WildEarth Guardians v. Jewell*, 738 F.3d 298 (D.C. Cir. 2013) (same)). Similarly, in *Aspen Trails Ranch, LLC v. Simmons*, 2010 MT 79, 356 Mont. 41, 230 P.3d 808, a landowner challenged approval of a preliminary subdivision plat on a parcel contiguous to his property, alleging numerous environmental and practical impacts on his use and enjoyment. The Court found standing, concluding plaintiff had not "alleged only generalized concerns" regarding the new development's likely affect, because "the impacts from the subdivision [will] have a more particular effect on him as a contiguous landowner than on the public at large." *Id.* at ¶¶ 39, 43.

Climate change suits inherently permit no such specificity. Thus, although some of the Plaintiffs in this case identify specific locations, such as Plaintiff Rikki's family ranch along the Powder River, Order at ¶ 195, Plaintiff Grace's access to the Clark Ford River, *id.* at ¶ 200, or Plaintiff Claire Vlases employment at the Big Sky Resort as a ski instructor, *id.* at ¶ 202, their alleged injuries are stated broadly as the inability to use Montana's rivers and streams, ¶¶ 199, 200, or simply the general climate of the State as a whole, and the impact this may have—such as requiring more time indoors because of wildfire smoke, either for health or reasons of discomfort. *See* ¶¶ 195, 198, 200–01, 203, 205, 207.

But these claimed harms are suffered in one way or another by all Montana residents. They are far more universal and undifferentiated than even "taxpayer" standing claims, as taxpayers are only part of the affected population. As the Supreme Court held in *United States v. Richardson*, 418 U.S. 166, 176 (1974), where plaintiff demanded information on CIA expenditures to help him determine his electoral choices, claims grounded in "generalized grievances about the conduct of government," are insufficient. And, as noted by the court in *Center for Biological Diversity ("Biological Diversity") v. Dept. of Interior*, 563 F.3d 466, 478 (D.C. Cir. 2009), "climate change is a harm that is shared by humanity at large, and the redress that Petitioners seek—to prevent an increase in global temperature—is not focused any more on these petitioners than it is on the remainder of the world's population. Therefore, petitioners' alleged injury is too generalized to establish standing."

Similarly, in *Amigos Bravos v. BLM*, 816 F. Supp. 2d 1118, 1132–34 (D. N.M. 2011), the court found no injury in fact because, although plaintiffs "allege that they recreate on public lands throughout New Mexico, . . . they do not indicate that they have used, or will use in the future, any of the lands that are the object of BLM's allegedly unlawful actions, or what the specific effects of climate change will be on those lands." In short, "Plaintiffs have failed to show that their members

have any more direct stake in the outcome of this case than does every other citizen of New Mexico, or for that matter, the United States." *Id.* at 1133.

Massachusetts v. EPA, 549 U.S. 497 (2007), does not support a different result. There the court held that Massachusetts had standing to challenge EPA's decision not to regulate GHG emissions under the Clean Air Act ("CAA"), noting that the fact "climate-change risks are 'widely shared' does not minimize Massachusetts' interest in the outcome of this litigation." *Id.* at 522. But it applied a unique standing analysis providing "special solicitude" to states, and then only based on Massachusetts' alleged coastal property losses due to rising sea levels "in its capacity of a landowner." *Id.* The Court never suggested that harms that are not simply "widely shared" but universal could constitute an injury-in-fact, certainly not under any standing analysis lacking the "special solicitude" it afforded Massachusetts.

II. Plaintiffs Cannot Show Causation

Each Plaintiff must show that his or her harm was caused by the specific actions of the Defendants—there must be "a fairly traceable connection between the injury and the conduct complained of." *Heffernan,* 2011 MT 91, ¶ 32. Ordinarily, this requires a showing that at least some of the alleged harm can be attributed to an identifiable action—*i.e.*, granting a permit, preparing an environmental impact statement—with respect to a particular project. *Park County*

Env'l Council v. Montana DEQ, 2020 MT 303, 402 Mont. 168, 477 P.3d 288, a case relied on by the court below, is a good example of a straightforward connection between the alleged injury, causation, and the relief sought.

At issue was DEQ's grant of a mineral exploration permit covering a specific area (Emigrant Gulch) that plaintiffs had used for recreational purposes and owned property in or near. Plaintiffs alleged that the agency had failed to take adequate account of these interests in preparing its MEPA Environmental Assessment, which concluded that there would be no significant environmental impact because of the licenses and that a full EIS was unnecessary. The Court held that plaintiffs had standing because "[t]he alleged injury is the direct result of DEQ's approval of Lucky's exploration permit and could be alleviated by a successful action resulting in an order vacating the permit." *Id.* at ¶ 22.

By contrast, Plaintiffs here identify no specific government action that has caused their alleged harms. Rather, they challenge Montana's *entire* policy of permitting and promoting the use of fossil fuels. Compl. at ¶ 120. Moreover, even when specific acts or projects are identified, *see*, *e.g.*, Compl. ¶¶ 118(h–m), (p), there is no effort to link any of these projects to the specific harms claim by

Plaintiffs. Such a link, however, is required even under the less stringent standing standard applied in procedural violation cases.[4]

Thus, in *WildEarth Guardians v. Jewell*, where plaintiffs challenged a final environmental impact statement supporting BLM's decision to lease certain tracts in Wyoming's Powder River Basin, the court found that "a plaintiff 'must still demonstrate a causal connection between the agency action and the alleged injury.'" 738 F.3d at 306. The court there concluded that plaintiffs met their burden only "because the local pollution that causes their members' aesthetic and recreational injuries follows inexorably from the decision to authorize leasing on the West Antelope II tracts." *Id.* By contrast, the claimed injury of Plaintiffs here implicates no such specific action but all human activity, from electricity usage and transportation to breathing.

In addition, the chain of causation on which the trial court relies is too attenuated. Indeed, the trial court's effort to demonstrate causation falls at the first fence. Its order does not require Defendants to do anything. It interprets Montana law to give them the *discretion* to consider the climate change impacts of GHG emissions. It is only if Defendants *choose* to consider GHG emissions, and then

[4]For procedural violations, *i.e.*, failure to complete a required environmental impact study, a plaintiff "need only demonstrate that compliance with [that requirement] *could* protect his concrete interests." *NRDC v. Jewell*, 749 F.3d 776, 783 (9th Cir. 2014).

conclude that the effect of these emissions justifies the denial of permits to exploit fossil fuel sources, that some GHG emissions might be avoided. Then it must also be assumed that these reductions will be in an amount sufficient to have any impact whatsoever on the Earth's atmospheric GHG inventory, which is entirely dependent on the actions of third parties beyond the jurisdiction of any American court. *See, e.g.*, *Biological Diversity,* 563 F.3d at 479 (rejecting a causal chain "rely[ing] on the speculation that various different groups of actors not present in this case…might act in a certain way in the future."). By analogy, this is like a tort claim faulting a homeowner for failing to consider the risk of flooding before watering the lawn, on the basis that some of the water may evaporate, that might contribute to increased precipitation, and a heavy rainfall in certain conditions could cause flooding on the plaintiff's property located across the state. This sort of "give-a-mouse-a-cookie" logic[5] has no stopping point.

In truth, applying traditional causation requirements to climate change claims is impossible. The trial court, and other courts in climate change cases, *see*, e.g., *Juliana v. United States*, 947 F.3d 1159, 1168 (9th Cir. 2020); *Amigos Bravos v. BLM*, 816 F. Supp. 2d at 1135, have relied on the "meaningful contribution" test for causation used in *Massachusetts v. EPA*. 549 U.S. at 525. But this was specifically in reference to the entirety of "U.S. motor-vehicle emissions," which

[5] *See* Laura Numeroff & Felicia Bond, If You Give a Mouse a Cookie (1985).

were estimated at "more than 1.7 billion metric tons" or "more than 6% of *worldwide* carbon dioxide emissions" at the time. *Id.* at 524–25 (emphasis added). The Court did not hold or even suggest that emissions of a lesser magnitude could be considered to "cause" climate change injuries. And, at least some reduction in those emissions was plausible because, once the court ruled that carbon dioxide was a statutory "pollutant," regulation was required once EPA made an "endangerment finding" that carbon dioxide emissions "may reasonably be anticipated to endanger public health or welfare," which was virtually assured. *See* 42 U.S.C. § 7521(a)(1). Here, by contrast, the trial court concluded that the Defendants failed to consider carbon dioxide emissions in their policymaking and permitting decisions, even though it found no similar statutory duty requiring the Defendants actually to consider and act on those emissions.

Moreover, even accepting the trial court's finding that Montana's annual carbon dioxide emissions rate is 166 million tons, that is still far less than 1 percent of global emissions of 52.59 billion tons. And only a fraction of those emissions are at issue here because Plaintiffs' remedy would affect (at most) only emissions from new projects. The trial court could get around these inconvenient facts only by reasoning that "[e]very ton of fossil fuel emissions" may be regarded as a legal cause" of Plaintiff's claimed injuries, Order at ¶ 92; Order, Conclusions of Law ("COL") at ¶ 6, but there is no basis in Montana or federal law for such an open-

ended view of causation that would logically reach every living, breathing human on Earth.[6]

III. Plaintiffs Cannot Show Redressability

Finally, Plaintiffs have failed to establish that it is "likely, as opposed to merely speculative, that the[ir] injury will be redressed by a favorable decision." *Lujan*, 504 U.S. at 561. Plaintiffs originally sought broad relief, including declarations that the challenged policies and underlying statutes are unconstitutional and "that Youth Plaintiffs' fundamental constitutional right to a clean and healthful environment includes a stable climate system that sustains human lives and liberties and that said right being violated." Compl. Prayer for Relief, at ¶ 4. In addition, they asked the court to enjoin "the aggregate affirmative acts, policies, and conditions described herein" and to that end sought 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." *Id.* at ¶¶ 5,7.

[6] The court below also measured Montana's CO_2 emissions against those of several countries, Order at ¶¶ 215–20, but this is a meaningless comparison when the relevant question is whether eliminating those emissions would have a meaningful impact on Plaintiffs' claimed injuries.

The trial court recognized that these requests were impossible, dismissing most of Plaintiffs' claims because the relief sought "exceeded the Court's authority under the political question doctrine." Order, at 3. Nevertheless, the trial court proceeded to try the case focusing on limitations in Montana law, and particularly a 2023 clarifying amendment, that "explicitly prohibit Montana's agencies from considering 'an evaluation of greenhouse gas emissions and corresponding impacts to the climate in the state or beyond the state's borders' in their MEPA reviews," *id.* at 7, the "MEPA Limitation."[7] It concluded that eliminating this limitation would be sufficient relief to support Plaintiffs' standing because "Defendants can alleviate the harmful environmental effects of Montana's fossil fuel activities through the lawful exercise of their authority if they are allowed to consider GHG emissions and climate change during MEPA review." *Id.* at ¶ 18.

But redressability is not so easily established. The trial court drew its definition of redressability—to "alleviate"—from *Larson*, 2019 MT at ¶ 46, *see* Order on Motion to Dismiss, at 15 (Aug. 4, 2021), but redressability was not in doubt there because the remedy requested was clear and effective: invalidation of the Secretary of State's certification that the Green Party had met the minimum

[7] In addition, during trial Defendants raised a statutory bar "eliminat[ing] the preventative remedies available to MEPA litigants: vacatur and injunction." Order at ¶ 25. The court concluded that this limitation also was unconstitutional. *Id.* at ¶ 29.

signature requirement under the applicable Montana election laws, excluding that party from the 2018 ballot. *Id.* at ¶ 5.[8] *Park County Env'l Council, supra,* is far more telling on this point. As noted, in that case the relief sought, an order vacating the challenged permit, could relieve plaintiffs' alleged injury. 2020 MT at ¶ 22.

But here there is no permit to vacate and the trial court's ruling cannot "alleviate," even in part, the Plaintiffs' alleged injuries simply by removing the legislature's bar to the consideration of GHG in permitting decisions overall. The responsible agencies are left with *discretion* to consider the impacts of GHG emissions or not. Indeed, in a case such as this one, where the Plaintiffs necessarily seek the regulation of third parties by Defendants, they must "demonstrat[e]: (1) that injunctive relief will cause the government to promulgate new regulations in the plaintiff's favor; and (2) that these regulations will necessarily cause the relevant third parties to adjust their conduct in a manner that will redress the plaintiff's alleged injury." *Washington Env'l Council v. Bellon*, 741 F.3d 1075, 1076 (9th Cir. 2014). *See also Skyline Wesleyan Church v. California*, 968 F.3d 738, 750 (9th Cir. 2020) (explaining that a third party's action must at least have the "predictable effect" of redressing plaintiff's injury).

[8] The trial court suggests that the redressability standard applied by Montana courts is less rigorous than the federal standard. This is incorrect. Indeed, the *Larson* Court cited both state and federal cases to support its statement of the standard for standing, including state cases themselves relying on federal Supreme Court opinions, and suggested no difference in any of the requirements. *Id.* at ¶ 46.

Juliana, where the Ninth Circuit dismissed another group of youth plaintiffs' climate change claims on redressability grounds, is the most apt authority. The court there was highly skeptical that simple injunctive relief could offer plaintiffs redress:

> The plaintiffs' experts opine that the federal government's leases and subsidies have contributed to global carbon emissions. But they do not show that even the total elimination of the challenged programs would halt the grown of carbon dioxide levels in the atmosphere, let alone decrease that growth…. Rather, these experts opine that such a result calls for no less than a fundamental transformation of this country's energy system, if not that of the industrialized world.

947 F.3d at 1170–71. The court properly held that it lacked the power to order the extensive measures necessary to have an impact on climate change, also explaining: "Not every problem posing a threat–even a clear and present danger—to the American Experiment can be solved by federal judges." *Id.* at 1174.

Plaintiffs here sought exactly the same far-reaching judicial relief *Juliana* rejected and the trial court properly found that this is beyond its power. But it nevertheless sought to give the Plaintiffs some solace through a ruling that, in fact, requires no action by the Defendants. While Defendants might make different decisions if they can consider GHG emissions, that consideration is discretionary—unlike in *Mass. v. EPA*, where the Court's ruling that carbon dioxide was a "pollutant" *required* EPA to take actions that would likely require

the regulation of GHG emissions. And there is, as discussed above respecting causation, no basis to conclude that any specific permitting decisions Defendants might make—which would implicate, at most, a *de minimis* proportion of global CO_2 emissions—could alleviate Plaintiffs' claimed injury.

CONCLUSION

As the *Juliana* Court concluded, global climate change is a matter for the political branches of government, not the courts. The Court should therefore reverse the judgment below and direct that this suit be dismissed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached Brief of Amici Curiae Frontier Institute, et al., complies with Montana Rule of Appellate Procedure 11(4) because the amicus brief is proportionally spaced using Microsoft Word 2016 in 14-point Times New Roman font and contains 4,808 words.

/s/ Keeley O. Cronin
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I, Keely O. Cronin, hereby certify that I have served true and accurate copies of the foregoing Brief- Amicus to the following on 02-20-2024:

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