

IN THE SUPREME COURT OF THE STATE OF MONTANA  
No. DA 23-0575

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RIKKI HELD, *et al.*,

Plaintiffs and Appellees,

v.

STATE OF MONTANA, *et al.*,

Defendants and Appellants.

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

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**BRIEF OF AMICI CURIAE  
MONTANA OUTDOOR ATHLETES  
IN SUPPORT OF APPELLEES**

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Domenic A. Cossi  
Western Justice Associates, PLLC  
303 W. Mendenhall, Suite 1  
Bozeman, Montana 59715  
Phone: (406) 587-1900  
Fax: (406) 587-1901  
[domenic@westernjusticelaw.com](mailto:domenic@westernjusticelaw.com)  
Attorneys for Outdoor Athletes as  
Amici Curiae

Christopher G. Winter\*  
Getches-Wilkinson Center for Natural  
Resources, Energy, and Environment  
University of Colorado Law School  
Wolf Law Building, 401 UCB  
Boulder, CO 80309  
(503) 701-6002  
[chris.winter@colorado.edu](mailto:chris.winter@colorado.edu)

*\*Pro hac vice application pending*

Sarah A. Matsumoto\*  
Getches-Green Natural Resources,  
Energy, and Environmental Law Clinic  
University of Colorado Law School  
Wolf Law Building, 401 UCB  
Boulder, CO 80309  
(206) 351-5515  
[sarah.matsumoto@colorado.edu](mailto:sarah.matsumoto@colorado.edu)

*\*Pro hac vice application pending*

**TABLE OF CONTENTS**

STATEMENT OF INTERESTS OF THE AMICUS CURIAE AND SUMMARY OF THE ARGUMENT ..... 1

ARGUMENT .....2

    I.    Amici Have Built Their Careers and Their Lives in Montana Around The Types of Outdoor Recreation That These Youth Plaintiffs Enjoy.....2

    II.   A Growing Body of Scientific Evidence Documents the Benefits of Outdoor Recreation for Mental, Physical, and Spiritual Health, Especially for Young People..... 10

    III.  The Constitution’s Mandate to “Maintain and Improve a Clean and Healthful Environment for Present and Future Generations” Must Include the Duty to Protect Montana’s Climate and Natural Resources for the Benefit of Montana’s Children and Youth ..... 14

CONCLUSION ..... 18

CERTIFICATE OF COMPLIANCE ..... 19

## TABLE OF CONTENTS

### **Cases**

*Park County Env't'l Council v. DEQ*, 2020 MT 303, 402 Mont. 168 ..... 16-17

*Montana Env't'l Info. Ctr. v. DEQ*, 1999 MT 248 296 Mont. 207 ..... 17

### **Constitutional Provisions**

Mont. Const. art II, § 3 ..... 4

Mont. Const. art IV, § 1 ..... 4, 15

### **Statutes**

Mont. Code Ann. §75-1-201(2)(a) ..... 14

Mont. Code Ann. §75-1-201(6)(a)(ii) ..... 14

### **Other Authorities**

Eigenschenk B, Thomann A, McClure M, et al., *Benefits of Outdoor Sports for Society. A Systematic Literature Review and Reflections on Evidence*, 2019;16(6):93 Int J Environ Res Public Health, 7, doi:10.3390/ijerph16060937 (2019 Mar 15) ..... 12-13

Fyfe-Johnson AL, Hazlehurst MF, Perrins SP, et al, *Nature and Children's Health: A Systematic Review*, 148(4):e2020049155, Pediatrics (2021)..... 10-11

Jackson, S.B, Stevenson, K.T., Petereson, M.N., Seekamp, E., *Outdoor Activity Participation Improves Adolescents' Mental Health and Well-Being during the COVID-19 Pandemic*, 2056.12 Int. J. Environ. Res. Public Health, 18 (2021)..... 12

Nancy Qwnne Lackey, Deborah A. Tysor, G. David McNay, Lead Joyner, Kensey H. Baker & Camilla Hodge, *Mental health benefits of nature-based recreation: a systematic review*, 24:3 Annals of Leisure Research, 379-393, DOI:10.1080/11745398.2019.1655459 (2021) ..... 11

Thomsen, J.M., Powell, R.B., & Monz, C.A, *A systematic review of the physical and mental health benefits of wildland recreation*, 36(1) *Journal of Park and Recreation Administration*, 123-148 (2018) ..... 11

University of Montana, *Montana Outdoor Recreation Economy Grows 14%, 3<sup>rd</sup> Largest in Nation*,  
<https://www.umt.edu/news/2023/11/112823itr.php#:~:text=Montana%20Outdoor%20Economy%20Grows%2014%25%2C%203rd%20Largest%20in%20the%20Nation,-28%20November%202023&text=She%20said%20the%20growth%20from,and%20investing%20in%20the%20outdoors> (Nov. 28, 2023) ..... 13

## **STATEMENT OF INTERESTS OF THE AMICUS CURIAE AND SUMMARY OF THE ARGUMENT**

Amicus Curiae parties Conrad Anker, *et al.* are Montana-based professional and/or competitive outdoor athletes who have personally experienced the direct impacts of climate change on their ability to climb, ski, fish, run, hike, bike, and paddle among Montana's world-class natural wonders. They have made their home in Montana to train and become the best in the world at their chosen pursuits, and their achievements have helped millions of young people in Montana and across the country to fall in love with the outdoors. Amici respectfully submit this brief in support of the youth Plaintiffs to underscore the injuries to their Constitutional right to a clean and healthful environment that these courageous young people are already experiencing.

Amici have personally experienced the mental, physical, and spiritual benefits of spending time outside, benefits that have been well documented in the scientific literature in recent years. The beneficial effects of interacting with nature are especially important for kids to promote physical activity, to build self-confidence, to manage stress, and to enhance social skills and cohesion. Montana's right to a clean and healthful environment must ensure that today's youth and future generations can continue to connect with nature for all these reasons. Amici are gravely concerned that the impacts of climate change and the arguments of the

State and its agencies in this case will deprive today's youth and future generations, including Plaintiffs, of these Constitutionally-protected rights. *Amici* respectfully urge this court to affirm the ruling below.

## **ARGUMENT**

### **I. Amici Have Built Their Careers and Their Lives in Montana Around The Types of Outdoor Recreation That These Youth Plaintiffs Enjoy.**

As this Court takes up the question of how to interpret and apply Montana's Constitutional protections for a "clean and healthful environment," Montana Const., Article II, Section 3, Article IX, Section 1(1), amici respectfully offer their real-world experiences and the ways that they have personally benefitted from these Constitutional rights. As professional and competitive athletes who have built their careers and their lives around outdoor recreation and access to Montana's water, land, air, and wildlife, amici have unique experiences to share that illustrate the power of Montana's Constitutional protections and also the threat posed to the interests of these courageous young Plaintiffs if Montana's water, land, air, and wildlife are further degraded by GHG pollution and climate change.

**Conrad Anker** is a Bozeman-based father of three who has been pushing the limits of mountaineering around the world for the last 30 years. His access to places like frozen waterfalls in Hyalite Canyon, Montana, have provided a launching pad for climbing accomplishments around the world in places like Mt. Everest, Antarctica, and the Karakorum in Pakistan. He serves on the Board of

Directors of Protect Our Winters, a nonprofit organization that helps people protect the places and experiences they love from climate change, and he is a frequent speaker on climate change and its impacts on alpine environments and outdoor recreation. Mr. Anker states:

The accessibility of public land, the open spaces, the willingness to let each person enjoy wilderness in their own way are all part of the Montana heritage. The snow in the winter becomes the summer's flow, the rivers that sustain the fish bring rejuvenation to the people. As an ice climber the threat of climate change is very real. We can look at the statistics of a shortened winter, but it really strikes home when you go to your favorite area and a climb that you're familiar with, that shapes up every year, is absent.

We care about the climate because we care about the future. Not some abstract vision of the future, but a future that children can experience as we have. To preserve what is great in our state we need to honor the constitution. Who benefits from not having the environment considered in impact studies? Not the peregrine, nor the ponderosa, nor the buffalo. The citizens do not benefit. The corporations benefit at the expense of what is the true treasure of Montana - its natural environment.

**Erin Clark** is professional trail runner for Nike Trail, based in Missoula, Montana. She also works as a volunteer assistant coach for the University of Montana track and cross-country program, and she is pursuing her master's degree in K-8 teaching. She hopes to pass on the joy of the outdoors and of movement to the next generation through teaching and coaching. Ms. Clark states:

It is difficult to put into words what being outdoors means to me, to have open spaces and clean air in which to experience our state. I'm far from alone in this peace, joy and centering that I find in the outdoors. It is easy to forget that these spaces we enjoy didn't happen



by accident. Generations before us built trails, cleaned up rivers, forged partnerships with local landowners and created and protected public lands. As climate change becomes increasingly felt by all of us, it is even more important that we double down on these efforts, and protect wild spaces in Montana, because our youth deserve to experience the same joy of cresting a hill in the pre-dawn light.

**Anne Gilbert-Chase** is a professional climber based in Bozeman, Montana and is an alpine climbing ambassador for Patagonia. She moved to Montana in 2009 and immersed herself in the mountain and climbing culture that contributes to making Montana a special place to live and call home. She learned to ice climb in Hyalite Canyon, which she calls “one of the most profound moments of my climbing experience.” She trained in Hyalite Canyon, which provided a training ground for climbing trips that would take her to the greater ranges of the world.

Ms. Gilbert-Chase states:

Over the years, I have seen the impacts of climate change on Hyalite Canyon, less snow and warmer temperatures, which means less water and not only less ice, but more importantly less water for the valley, seeing as Hyalite is one of our main watersheds for Bozeman. As Bozeman continues to grow and people continue to use our precious resources, the shorter and warmer winters will directly impact our ability to have clean drinking water not only for the current generation but future generations as well.

**Duncan Hamilton** is a competitive track and field athlete who went to high school in Bozeman, Montana and attended Montana State University. He is now a professional runner with Nike and the Bowerman Track Club. Mr. Hamilton states:

My connection to the outdoors has been a huge source of joy in my life, both mentally and physically. Running through Montana's beautiful mountain trails, I have found peace and serenity. Outdoor activities have been instrumental in maintaining my mental well-being, offering a therapeutic escape and fostering a profound appreciation for the natural world. Growing up in a place where outdoor activities were encouraged led to my career and long-time dream of becoming a professional athlete. However, this love of the outdoors is tinged with concern as climate change threatens these pristine environments. Urgent action is needed to preserve these spaces and ensure future generations can enjoy all that they have to offer.

**KT Miller** is a mountain guide with over 15 years of experience sharing and navigating remote mountain landscapes in Southwest Montana and on expeditions in Alaska, Bolivia, Scandinavia, and Europe. She grew up in Bozeman, Montana and currently resides in Cooke City, Montana. KT is also a biocultural social scientist with particular expertise in community-based research and braiding of Indigenous knowledge and science. Ms.

Miller states:

I was born and raised in Montana and have been making a living as a professional skier, photographer and mountain guide for over 15 years. The importance of access to the outdoors for my mental health, well-being, and livelihood cannot be overstated. In the summer of 2021, I couldn't exercise outside for over 4 weeks because the wildfire smoke made the air quality dangerous to breathe in. Climate change is not a thing of the future – it is here now, and I have witnessed shorter, warmer, drier winters and the economic and health threats of wildfires each summer during my 33 years of calling Montana home.

**Jeff Mogavero** is a professional trail runner for On Running and an online running coach with Alpine Running Guides. Jeff lives in Missoula, Montana where he works, trains, and plays outside as much as he can. He also enjoys river surfing, fly fishing, skiing, and gravel biking. Jeff is also an advocate for sustainability and climate change solutions in his community.

Mr. Mogavero states:

I am so lucky to be able to explore Montana on two feet as a professional mountain runner. When I am not running, I am fly fishing, ski touring, mountain biking, bow hunting, river surfing, or hiking. Without a clean and healthy environment, I would not be able to pursue my passions and keep myself physically or mentally healthy. Recreating outdoors is an amazing way to connect with your surroundings and stay healthy, and I don't want to see climate change limits this for myself or future generations. Nobody, young or old, should have to worry about having clean air or a livable climate.

**Andy Newell** is a professional ski racer who lives in Bozeman, Montana and has been competing in cross-country skiing since 2001. He competed at the 2006, 2010, and 2014 Winter Olympic and founded the organization Athletes for Action in 2013 to bring awareness to climate change. He is currently the Bridger Ski Foundation Pro Team coach. Mr.

Newell states:

As someone who has been on skis since they were two years old, I have a strong connection to the outdoors. As a cross-country ski racer, I have relied on regular snowpack for training over the past 25 years and personally witnessed how climate change is affecting our mountains, glaciers, and the irregularity of winter seasons. I consider myself lucky to be able to enjoy these natural resources in Montana,

but if we don't act, the environmental and economic devastation from climate change will be an insurmountable hurdle for future generations.

**Mike Wolfe** grew up in Bozeman, Montana and was a competitive mountain ultra-runner for over a decade. He has competed in over 100 ultra-distance running mountain races around the world, and he owns Mountain Project LLC, a gym and training facility for outdoor athletes located in Bozeman, Montana. Mike is also a passionate big game hunter, which he has enjoyed since he was a young boy growing up in Montana. Mr. Wolfe states:

Our family time growing up in Montana was always focused on time spent in the mountains; hunting, fishing, camping, backpacking, hiking, skiing, working on ranches. I grew to cherish this way of life - time spent in wild places of Montana, during all seasons. Now, having spent large portions of my life roaming the mountains in Montana, I notice acute changes taking place in this landscape I hold dear. Choking wildfire seasons and unremembered heat waves in the summers now seem the norm. Now often times in the summer months I find myself checking the Air Quality Indexes before I go for a run, as it's often unhealthy to train outside running. I worry what the next summer will bring, I worry what Montana will be like for my children when they are grown up. I feel a sense of anxiety to spend more time in the wilds of Montana, before its irreparably changed, to bring my kids on trail adventures in the mountains with me, so they can experience as much as possible, worrying the power of Montana's wild lands that shaped who I am will be soon gone.

**Max Yzaguirre** owns Montana Angling Company based out of Bozeman, Montana. As a fly-fishing outfitter, he can be found on the water almost every day from April until November, working hard for his clients and sharing with them his experience and passion for fly fishing in Montana.

Fly fishing has taken him all over the United States and beyond, but there's no doubt in his mind that Montana is the last best place to catch wild trout.

Mr. Yzaguirre states:

As a professional fly-fishing outfitter on the rivers of Montana for over a decade and a lifelong sportsman, I have seen the incredible power that the pristine water, mountains, and air of Montana can have on a person's life. Fly fishing is a legacy sport in Montana that has fostered incredible connections over generations between people and wild places. It also provides working-class Montanan's in both urban and rural areas with jobs, economic activity, and a way of life that cannot be replaced. All of this is predicated on cold, clean, and connected rivers, which climate change has and will continue to threaten. These great wild rivers with thriving fisheries like the Yellowstone, the Flathead, the Missouri, the Madison, and many more aren't just resources that can be replaced or places that can be rebuilt. These rivers are our history and our future, which we cannot afford to lose to climate change.

Amici are uniquely well situated to provide this Court with information and perspective on the threats and injuries experienced by the youth Plaintiffs as a result of the impacts of climate change on Montana's air, water, land, and wildlife. As the District Court found in its order below, Eva L. enjoys many outdoor activities like climbing. FOF # 204(a).<sup>1</sup> Badge is passionate about skiing and he and his brother Lander both enjoy hunting and fishing with their family. FOF #196(a), (b), (l). Kian was taught to downhill and cross-country ski by his mother, and he is also a passionate fly fisher and has fished with his father since he was

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<sup>1</sup> Amici cite to the August 14, 2023 Findings of Fact (Doc. 405) using the conventions described by the Plaintiffs in their Answer.

four years old. FOF # 198(b), (e). Georgi is a competitive Nordic skier and has competed at the U.S. National Championships. FOF #199(b). Claire enjoys skiing and running to maintain her physical health and has worked as a ski instructor at Big Sky Resort. FOF #202(g), (a). Mica is a long-distance runner, which helps him to relieve stress. FOF #205(a), (c).

Amici have lived, worked, and recreated in Montana for decades, in some cases for their entire lives. They have decades of experience building their lives, raising their families, and starting small businesses around the connection to nature in Montana that they share with the youth Plaintiffs. They have competed in the Olympics, traveled the world, and explored alpine environments in the harshest conditions, returning home to Montana to invest in their local communities and to live in harmony with Montana's natural environment. Amici feel a responsibility to do what they can to ensure that young people in Montana have these same opportunities.

Amici and the youth Plaintiffs are already suffering from the adverse effects of climate change in Montana. Their physical, mental, and spiritual health are at risk and their futures in Montana are on the line. These are real world stories that illustrate the ways that climate change threatens the futures of today's youth in this state. Moreover, the real-world benefits of Montana's right to a clean and healthful

environment are embodied in amici's and Plaintiffs' use and enjoyment of Montana's air, water, land, and wildlife resources.

## **II. A Growing Body of Scientific Evidence Documents the Benefits of Outdoor Recreation for Mental, Physical, and Spiritual Health, Especially for Young People.**

Amici and the youth Plaintiffs share similar views on the benefits that they enjoy from spending time outside connecting with Montana's unparalleled natural resources. Those personal experiences are backed by an ever-growing body of scientific evidence that documents the benefits to physical, mental, and spiritual health from spending time outside, which are especially important for children and youth as they develop. This scientific literature underscores the value of Montana's right to a clean and healthful environment for current and future generations alike, and it provides objective support for the harms that will accrue to Plaintiffs and other young people in Montana from the State's actions to authorize fossil fuel use and extraction in Montana, while ignoring the impacts of climate change when doing so.

As an example, in a recent study an interdisciplinary group of researchers conducted a systematic review of existing evidence regarding the relationship between contact with nature and children's health.<sup>2</sup> They found "compelling

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<sup>2</sup> Fyfe-Johnson AL, Hazlehurst MF, Perrins SP, et al, *Nature and Children's Health: A Systematic Review*, 148(4):e2020049155, Pediatrics (2021).

evidence . . . on the relationship between nature contact and physical activity, a health behavior with numerous known benefits for children including weight and cardiorespiratory fitness.” *Id.* They also found compelling evidence for “the relationship between nature contact and children’s cognitive, behavioral, and mental health.” *Id.* These conclusions are consistent with findings from an earlier review that looked specifically at the mental health benefits of nature-based recreation, which found substantial support for positive mental health outcomes, including well-being, cognition, resilience, restoration and decreased levels of anxiety, depression, and stress.<sup>3</sup>

Researchers have also looked specifically at the benefit of connecting with undeveloped natural settings, like those available in Montana. For example, a 2018 review looked at the benefits of “wildland” recreation, which they define as “non-motorized outdoor recreation that is dependent on the natural resources of an undeveloped natural setting.”<sup>4</sup> The authors noted the potential beneficial impacts of such recreation on improved self-esteem, increased physical activity, and a

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<sup>3</sup> Nancy Qwnne Lackey, Deborah A. Tysor, G. David McNay, Lead Joyner, Kensey H. Baker & Camilla Hodge, *Mental health benefits of nature-based recreation: a systematic review*, 24:3 *Annals of Leisure Research*, 379-393, DOI:10.1080/11745398.2019.1655459 (2021).

<sup>4</sup> Thomsen, J.M., Powell, R.B., & Monz, C.A, *A systematic review of the physical and mental health benefits of wildland recreation*, 36(1) *Journal of Park and Recreation Administration*, 123-148 (2018).



reduction in perceived stress, and concluded that “wildlands offer vast potential to address physical, and in particular mental health issues and support specific populations that may not have the opportunity to achieve health outcomes in urban and other non-wildland spaces.”<sup>5</sup>

Researchers have also looked specifically at the role that outdoor activity played in the ability of adolescents to cope with the COVID-19 pandemic.<sup>6</sup> The authors concluded that adolescents’ subjective well-being declined less during the pandemic if they had high outdoor activity participation rates prior to the pandemic. Moreover, continued participation in outdoor play during the pandemic resulted in smaller decreases in well-being. The authors concluded that outdoor play provided lasting resilience to stress in young people.

Researchers have also approached this question from a societal point of view, looking at the overall benefits and costs of outdoor sports.<sup>7</sup> They similarly concluded that “outdoor sports provide significant physical and mental health

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<sup>5</sup> *Id.*

<sup>6</sup> Jackson, S.B, Stevenson, K.T., Petereson, M.N., Seekamp, E., *Outdoor Activity Participation Improves Adolescents’ Mental Health and Well-Being during the COVID-19 Pandemic*, 2056.12 Int. J. Environ. Res. Public Health, 18 (2021).d

<sup>7</sup> Eigenschenk B, Thomann A, McClure M, et al., *Benefits of Outdoor Sports for Society. A Systematic Literature Review and Reflections on Evidence*, 2019;16(6):93 Int J Environ Res Public Health, 7, doi:10.3390/ijerph16060937 (2019 Mar 15).

benefits that often go beyond the benefits of physical activity indoors.”<sup>8</sup> They also noted the potential relational and societal benefits as outdoor sports “help to connect people with the communities they live in and build up strong connections to other people, places, and nature.”<sup>9</sup> Consistent with this literature, the Plaintiffs here clearly articulated before the District Court how important outdoor recreation activities and sports are to their physical health, mental health, and overall well-being. FOF #196(a)-(g), (l), (o); #198(b)-(h); #199(b)-(f); #200(a)-(c); #202(a)-(d), (g); #203(b)-(d); #204(a)-(c); #205(b)-(e), (h); #207(l).

Finally, it is also important to note studies and data on the economic benefits of outdoor recreation, an area of research that has also been advancing quickly in recent years. According to the most recent data from the U.S. Bureau of Economic Analysis (BEA), outdoor recreation in Montana supported \$2.9 billion in gross domestic product in 2022 and supported 29,543 jobs or 5.6% of all the employees in Montana.<sup>10</sup> The Montana outdoor economy grew 14% from 2021 to 2022 and

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<sup>8</sup> *Id.* at 14.

<sup>9</sup> *Id.*

<sup>10</sup> University of Montana, *Montana Outdoor Recreation Economy Grows 14%, 3<sup>rd</sup> Largest in Nation*, <https://www.umt.edu/news/2023/11/112823itrr.php#:~:text=Montana%20Outdoor%20Economy%20Grows%2014%25%2C%203rd%20Largest%20in%20the%20Nation,-28%20November%202023&text=She%20said%20the%20growth%20from,and%20investing%20in%20the%20outdoors> (Nov. 28, 2023).

accounted for 4.3% of Montana’s gross domestic product. Montana ranks third in the country on the proportion of its economy linked to outdoor recreation. Indeed, many amici count themselves among those Montanans employed in the outdoor recreation economy.

This discussion just begins to scratch the surface of the growing body of scientific literature that links outdoor recreation to a variety of important benefits for young people and society at large. These are some of the important values at stake as this Court turns to the question of how to interpret and apply Montana’s constitutional right to a clean and healthful environment.

**III. The Constitution’s Mandate to “Maintain and Improve a Clean and Healthful Environment for Present and Future Generations” Must Include the Duty to Protect Montana’s Climate and Natural Resources for the Benefit of Montana’s Children and Youth.**

Amici respectfully submit that this Court should affirm the ruling below that §75-1-201(2)(a), MCA (the “MEPA Limitation”) and §75-1-201(6)(a)(ii), MCA infringe upon Plaintiffs’ fundamental constitutional rights to a clean and healthful environment. In particular, this Court should reject the State’s argument that the Framers of the Constitution did not intend “to resolve global environmental issues or require the State to respond to global issues.” State Br. at 19. To uphold the Framers’ forward-thinking vision for the Constitution and the inalienable rights of current and future generations of youth in Montana, the right to a “clean and healthful environment” and to “an environmental life support system” must apply

with *particular force* to the issue of climate change and its impacts in Montana.

Indeed, there is no greater threat to Montana's natural resources.

The youth Plaintiffs have demonstrated through compelling and unrefuted evidence that his case is about their unique futures here in Montana and the localized and particularized harms they are experiencing based on damage to Montana's air, land, water, and wildlife – natural resources that the State and all of us have a duty to protect.

Plaintiffs developed a robust factual record before the District Court based on expert testimony from numerous scientific experts that Montana's natural resources are suffering from the impacts of climate change and that these adverse impacts jeopardize the ability of Plaintiffs to connect with nature and spend time outside, which would otherwise provide them with a variety of benefits to their physical, mental, and spiritual well-being. The District Court findings set forth these impacts in exhaustive detail. *See, e.g.*, FOF #145 (“Montana’s snowpack has been decreasing and is likely to continue decreasing with warmer temperatures, as a long-term trend caused by impacts to the climate.”); FOF #174 (“Access to boating and fishing on certain rivers and lakes in Montana has been limited, and in some instances completely foreclosed, because of low river flows or high-water temperatures.”); FOF #176 (“If GHG emissions continue to rise, impacts to the climate will further harm Montana’s wildlife and fisheries, and the ability of

Plaintiffs to hunt and fish.”); FOF #185 (“Wildfires in Montana are expected to become significantly worse in the coming years without immediate steps to reduce GHG emissions.”); FOF #128 (“Wildfire smoke has harmed the health of Plaintiffs Olivia, Jeffrey, and Nate, all who have pre-existing health conditions, and other Plaintiffs, including Badge and Eva.”). Amici stand side-by-side these youth Plaintiffs in support of their defense of the District Court’s ruling. As professional and competitive outdoor athletes who call Montana home, amici too have experienced the impacts of climate change on Montana’s unique and precious environment.

Moreover, these young people have also documented that Montana is a “major emitter of GHG emissions in the world in absolute terms, in person terms, and historically.” FOF #222. Youth Plaintiffs have also established that reductions of GHG’s in Montana are necessary – and achievable – to restore Earth’s energy balance and to avoid the most catastrophic impacts of climate change. FOF #89-92.

Given this record, it is difficult to accept that a court might turn away the Plaintiffs and might tell them that the words written down in our Constitution are meaningless in the context of GHG pollution and climate change. This Court has repeatedly upheld the force and effect of the Constitution’s right to a clean and healthful environment, reaffirming most recently that “the framers of the Montana constitution intended it to contain ‘the strongest environmental protection

provision found in any state constitution.” *Park County Env’tl Council v. DEQ*, 2020 MT 303, ¶61, 402 Mont. 168 (quoting *Montana Env’tl Info. Ctr. v. DEQ*, 1999 MT 248, ¶66, 296 Mont. 207). The Framers placed particular emphasis on ensuring that the people of Montana had effective remedies to enforce those rights. *Montana Env’tl Info. Ctr.*, ¶77. The youth Plaintiffs have rightly turned to the judicial branch and this Court to uphold their inalienable right to a clean and healthful environment, which the Framers intended to be “preventative and forward-looking” and to impose “an affirmative duty upon their government to take active steps to realize this right.” *Park Cnty.*, ¶63.

This Court has previously admonished DEQ that the Constitution “does not require that dead fish float on the surface of our state’s rivers and streams before [the Montana Constitution’s] farsighted environmental protections can be enforced.” *Montana Env’tl Info. Ctr.*, ¶77. Now, however, the State goes even further. According to its most recent argument, even if dead fish float across the state’s rivers, or unhealthy, smoke-filled air blankets our valleys and clogs the lungs of our youth, or our glaciers melt, snowpack dwindles, and our forests burn, even if all of these things happen, our children still cannot invoke their constitutional right in seeking redress for these environmental harms because they are caused by climate change. As people who are deeply connected to the outdoors in Montana and who care passionately about the future that we pass on to our

children and their children, amici respectfully ask this Court to affirm the ruling below and reject the State’s attempt to eviscerate the constitutional right to a clean and healthful environment in Montana.

## CONCLUSION

For reasons set forth above, Amici Curiae Conrad Anker, *et al.* respectfully request that this Court affirm the judgment of the District Court.

Dated this 25<sup>th</sup> day of March, 2024.

/s/ Domenic A. Cossi

Domenic A. Cossi  
Western Justice Associates, PLLC  
303 W. Mendenhall, Suite 1  
Bozeman, Montana 59715  
(406) 587-1900  
domenic@westernjusticelaw.com  
Attorneys for Outdoor Athletes as  
Amici Curiae

/s/ Christopher G. Winter

Christopher G. Winter\*  
Getches-Wilkinson Center for Natural  
Resources, Energy, and Environment  
University of Colorado Law School  
Wolf Law Building, 401 UCB  
Boulder, CO 80309  
(503) 701-6002  
[chris.winter@colorado.edu](mailto:chris.winter@colorado.edu)  
*\*Pro hac vice application pending*

/s/ Sarah A. Matsumoto

Sarah A. Matsumoto\*  
Getches-Green Natural Resources,  
Energy, and Environmental Law Clinic  
University of Colorado Law School  
Wolf Law Building, 401 UCB  
Boulder, CO 80309  
(206) 351-5515  
[sarah.matsumoto@colorado.edu](mailto:sarah.matsumoto@colorado.edu)  
*\*Pro hac vice application pending*

## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; it is double spaced except for footnotes and for indented material; and the word 4,402 as calculated by Microsoft Word, excluding those sections exempted under Rule 11(4)(d).

Dated this 25<sup>th</sup> day of March, 2024.

WESTERN JUSTICE ASSOCIATES, PLLC

*/s/ Domenic A. Cossi*

DOMENIC A. COSSI

303 W. Mendenhall, Suite 1

Bozeman, Montana 59715

(406) 587-1900

domenic@westernjusticelaw.com

Attorneys for Outdoor Athletes as Amici Curiae



## CERTIFICATE OF SERVICE

I, Domenic Cossi, hereby certify that I have served true and accurate copies of the foregoing Brief - Amicus to the following on 03-25-2024:

Nathan Bellinger (Attorney)

1216 Lincoln St

Eugene OR 97401

Representing: Badge B., Lander B., Lilian D., Ruby D., Georgianna Fischer, Kathryn Grace Gibson-Snyder, Rikki Held, Taleah Hernandez, Jeffrey K., Mika K., Nathaniel K., Eva L., Sariel Sandoval, Kian T., Olivia Vesovich, Claire Vlases

Service Method: eService

Andrea K. Rodgers (Attorney)

3026 NW Esplanade

Seattle WA 98117

Representing: Badge B., Lander B., Lilian D., Ruby D., Georgianna Fischer, Kathryn Grace Gibson-Snyder, Rikki Held, Taleah Hernandez, Jeffrey K., Mika K., Nathaniel K., Eva L., Sariel Sandoval, Kian T., Olivia Vesovich, Claire Vlases

Service Method: eService

Roger M. Sullivan (Attorney)

345 1st Avenue E

MT

Kalispell MT 59901

Representing: Badge B., Lander B., Lilian D., Ruby D., Georgianna Fischer, Kathryn Grace Gibson-Snyder, Rikki Held, Taleah Hernandez, Jeffrey K., Mika K., Nathaniel K., Eva L., Sariel Sandoval, Kian T., Olivia Vesovich, Claire Vlases

Service Method: eService

Melissa Anne Hornbein (Attorney)

103 Reeder's Alley

Helena MT 59601

Representing: Badge B., Lander B., Lilian D., Ruby D., Georgianna Fischer, Kathryn Grace Gibson-Snyder, Rikki Held, Taleah Hernandez, Jeffrey K., Mika K., Nathaniel K., Eva L., Sariel Sandoval, Kian T., Olivia Vesovich, Claire Vlases

Service Method: eService

Philip L. Gregory (Attorney)

1250 Godetia Drive

Woodside CA 94062

Representing: Badge B., Lander B., Lilian D., Ruby D., Georgianna Fischer, Kathryn Grace Gibson-Snyder, Rikki Held, Taleah Hernandez, Jeffrey K., Mika K., Nathaniel K., Eva L., Sariel Sandoval, Kian T., Olivia Vesovich, Claire Vlasses  
Service Method: eService

Barbara L Chillcott (Attorney)  
103 Reeder's Alley  
Helena MT 59601

Representing: Badge B., Lander B., Lilian D., Ruby D., Georgianna Fischer, Kathryn Grace Gibson-Snyder, Rikki Held, Taleah Hernandez, Jeffrey K., Mika K., Nathaniel K., Eva L., Sariel Sandoval, Kian T., Olivia Vesovich, Claire Vlasses  
Service Method: eService

Dustin Alan Richard Leftridge (Attorney)  
345 First Avenue East  
Montana  
Kalispell MT 59901

Representing: Badge B., Lander B., Lilian D., Ruby D., Georgianna Fischer, Kathryn Grace Gibson-Snyder, Rikki Held, Taleah Hernandez, Jeffrey K., Mika K., Nathaniel K., Eva L., Sariel Sandoval, Kian T., Olivia Vesovich, Claire Vlasses  
Service Method: eService

Michael D. Russell (Govt Attorney)  
215 N Sanders  
Helena MT 59620  
Representing: State of Montana  
Service Method: eService

Mark L. Stermitz (Attorney)  
304 South 4th St. East  
Suite 100  
Missoula MT 59801  
Representing: State of Montana  
Service Method: eService

Thane P. Johnson (Govt Attorney)  
215 N SANDERS ST  
P.O. Box 201401  
HELENA MT 59620-1401  
Representing: State of Montana  
Service Method: eService

Emily Jones (Attorney)  
115 North Broadway  
Suite 410  
Billings MT 59101  
Representing: State of Montana  
Service Method: eService

Selena Zoe Sauer (Attorney)  
1667 Whitefish Stage Rd.  
#101  
Kalispell MT 59901-2173  
Representing: State of Montana  
Service Method: eService

Dale Schowengerdt (Attorney)  
7 West 6th Avenue, Suite 518  
Helena MT 59601  
Representing: Greg Gianforte, MT Dept Environmental Quality, Department of Natural Resources,  
Billings Regional Office, MT Dept of Transportation  
Service Method: eService

Lee M. McKenna (Govt Attorney)  
1520 E. Sixth Ave.  
HELENA MT 59601-0908  
Representing: MT Dept Environmental Quality  
Service Method: eService

Quentin M. Rhoades (Attorney)  
430 Ryman St.  
2nd Floor  
Missoula MT 59802  
Representing: Friends of the Court  
Service Method: eService

Brian P. Thompson (Attorney)  
PO Box 1697  
Helena MT 59624  
Representing: Treasure State Resource Association of Montana  
Service Method: eService

Steven T. Wade (Attorney)  
PO Box 1697  
Helena MT 59624  
Representing: Treasure State Resource Association of Montana  
Service Method: eService

Hallee C. Frandsen (Attorney)  
PO Box 1697  
801 N. Last Chance Gulch, Ste. 101  
Helena MT 59624  
Representing: Treasure State Resource Association of Montana  
Service Method: eService

Keeley Cronin (Attorney)  
c/o Baker & Hostetler LLP  
1801 California Street, Suite 4400

Denver CO 80202  
Representing: The Frontier Institute  
Service Method: eService

Lindsay Marie Thane (Attorney)  
1211 SW 5th Ave  
#1900  
Portland OR 97204  
Representing: Navajo Transitional Energy Company, LLC  
Service Method: eService

Ryen L. Godwin (Attorney)  
1420 Fifth Ave., Ste. 3400  
Seattle WA 98101  
Representing: Navajo Transitional Energy Company, LLC  
Service Method: eService

Matthew Herman Dolphay (Attorney)  
401 N. 31st Street, Suite 1500  
P.O. Box 639  
Billings MT 59103-0639  
Representing: Montana Chamber of Commerce, Chamber of Commerce of The United States of America, Billings Chamber of Commerce, Helena Chamber of Commerce, Kalispell Chamber of Commerce  
Service Method: eService

Frederick M. Ralph (Attorney)  
125 Bank Street  
Suite 600  
Missoula MT 59802  
Representing: Northwestern Corporation  
Service Method: eService

John Kent Tabaracci (Attorney)  
208 N. Montana Ave. #200  
Helena MT 59601  
Representing: Northwestern Corporation  
Service Method: eService

Abby Jane Moscatel (Attorney)  
PO Box 931  
Lakeside MT 59922  
Representing: Montana Senate President as Officer of the Legislature and Speaker of the House of Representatives as Officer of the Legislature  
Service Method: eService

Timothy M. Bechtold (Attorney)  
PO Box 7051  
317 East Spruce Street

Missoula MT 59807  
Representing: Public Health Experts and Doctors  
Service Method: eService

James H. Goetz (Attorney)  
PO Box 6580  
Bozeman MT 59771-6580  
Representing: Environmental and Constitutional Law Professors'  
Service Method: eService

Lawrence A. Anderson (Attorney)  
Attorney at Law, P.C.  
P.O. Box 2608  
Great Falls MT 59403-2608  
Representing: Former Justices  
Service Method: eService

John Martin Morrison (Attorney)  
401 North Last Chance Gulch  
P.O. Box 557  
Helena MT 59624-0557  
Representing: Children's Rights Advocates  
Service Method: eService

Paul J. Lawrence (Attorney)  
1191 Second Avenue  
Suite 2000  
Seattle WA 98101  
Representing: Outdoor Recreation Industry  
Service Method: eService

Amanda D. Galvan (Attorney)  
313 East Main Street  
Bozeman MT 59715  
Representing: Tribal and Conservation  
Service Method: eService

Jenny Kay Harbine (Attorney)  
313 E Main St  
Bozeman MT 59715  
Representing: Tribal and Conservation  
Service Method: eService

Justin P. Stalpes (Attorney)  
610 Professional Drive  
Bozeman MT 59718  
Representing: Trial Lawyers Association  
Service Method: eService

Monte Tyler Mills (Attorney)  
William H. Gates Hall  
Box 353020  
Seattle WA 98195-3020  
Representing: Denise Juneau, Kathryn Shanley, Native Nations in Montana  
Service Method: eService

Robert J. Guite (Attorney)  
4 Embarcadero Center, 17th Fl  
Sheppard Mullin  
San Francisco CA 94111  
Representing: Montana Interfaith Power and Light  
Service Method: eService

Alexander H. Rate (Attorney)  
713 Loch Leven Drive  
Livingston MT 59047  
Representing: American Civil Liberties Union, ACLU of Montana  
Service Method: eService

Juan Carlos Rodriguez (Interested Observer)  
Service Method: Conventional

Byron L. Trackwell (Amicus Curiae)  
7315 SW 23rd Court  
Topeka KS 66614  
Service Method: Conventional

Alex Guillen (Interested Observer)  
Service Method: Conventional

Julia A. Olson (Attorney)  
1216 Lincoln St.  
Eugene OR 97401  
Representing: Badge B., Lander B., Lilian D., Ruby D., Georgianna Fischer, Kathryn Grace Gibson-Snyder, Rikki Held, Taleah Hernandez, Jeffrey K., Mika K., Nathaniel K., Eva L., Sariel Sandoval, Kian T., Olivia Vesovich, Claire Vlases  
Service Method: Conventional

Shannon M. Heim (Attorney)  
2898 Alpine View Loop  
Helena MT 59601-9760  
Representing: Northwestern Corporation  
Service Method: Conventional

Robert Cameron (Attorney)  
203 N. Ewing Street  
Helena MT 59601

Representing: State of Alabama, State of Alaska, State of Arkansas, State of Idaho, State of North Dakota, State of Indiana, State of Mississippi, State of Missouri, State of Nebraska, State of South Carolina, State of South Dakota, State of Utah, State of Wyoming, Commonwealth of Virginia, State of Iowa

Service Method: Conventional

Rebecca Leah Davis (Attorney)

1939 Harrison St., Suite 150

Oakland CA 94612

Representing: Outdoor Recreation Industry

Service Method: Conventional

Brian Flynn (Attorney)

1939 Harrison St., Suite 150

Oakland CA 94612

Representing: Outdoor Recreation Industry

Service Method: Conventional

Caleb Jaffe (Attorney)

580 Massie Road

Charlottesville VA

Representing: Public Health Experts and Doctors

Service Method: Conventional

Electronically signed by amy beck on behalf of Domenic Cossi

Dated: 03-25-2024