



Green Amendment Victories
How Green Amendments Are
Recognizing & Protecting
Environmental Rights



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

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

Held v. State of Montana

Cause No. CDV-2020-307

Mt. First Jud. Dis. Ct., Lewis & Clark Cty., Final Order, Aug. 13, 2023

Sixteen Youth Plaintiffs filed suit against several Montana state agencies and the Governor of Montana (collectively, “state of Montana”). The Youth Plaintiffs claimed that certain government actions violated their constitutional environmental rights as protected by Article II and Article IX of the state constitution, including the enactment of the plaintiff-categorized “Climate Change Exemption” within the Montana Environmental Policy Act (MEPA), “which forbids the State and its agents from considering the impacts of greenhouse gas (GHG) emissions or climate change in their environmental reviews.” Specifically a 2011 modification to MEPA read: “an environmental review conducted pursuant to subsection (1) may not include a review of actual or potential impacts beyond Montana’s borders. It may not include actual or potential impacts that are regional, national, or global in nature.” During the course of the litigation, on May 10, 2023, the state legislature passed HB 971 in order to strengthen and clarify the MEPA limitation with regards to climate change. MEPA was amended, in part, to read: “... an environmental review ... may not include an evaluation of greenhouse gas emissions and corresponding impacts to the climate in

the state or beyond the state's borders.” The Youth Plaintiffs asserted, among other claims, that the state of Montana has violated their constitutional rights to a clean and healthful environment under Article II, Section 3 and complimentary provisions found in the Montana Constitution (aka the Montana Green Amendment). The case was the subject of a 6 ½ day trial, starting on June 12, 2023 and ending June 20, 2023.

In a final ruling issued on August 14, 2023, state Judge Kathy Seeley held the challenged legislation to be unconstitutional because it violated the environmental rights of the Youth Plaintiffs, as protected by Article II Section 3 and Article IX Section 1 of the state constitution.

Citing various aspects of the evidence and expert testimony put forth in the June 2023 trial, Judge Seeley acknowledged the serious impacts of the climate crisis for the health and safety of the Youth Plaintiffs and Montana’s environment. The Judge, citing various credible witnesses, also recognized the unique vulnerability of youth, including the Youth Plaintiffs, to the ramifications of climate change; and recognized that mitigating climate change now (including by reducing fossil fuel production and use) would benefit the Youth Plaintiffs.

Judge Seeley found that, based on credible trial witnesses and evidence, there is “overwhelming scientific consensus that the Earth is warming as a direct result of human GHG emissions, primarily from the burning of fossil fuels;” and that “the science is unequivocal that dangerous impacts to the climate are occurring due to human activities, primarily from the extraction and burning of fossil fuels.” Based on the evidence, Judge Seeley recognized that Montana is being affected by climate change today, that the state is in fact heating faster than the national average and that the rate of warming in Montana is increasing. Judge Seeley reiterated a frequently cited fact offered during the case’s trial, that “every ton of fossil fuel emissions contributes to global warming and impacts and thus increases the exposure of Youth Plaintiffs to harms now and additional harms in the future.” Judge Seeley’s findings, based on trial testimony and evidence, included that “climate change is a critical threat to public health”; “[anthropogenic climate change is impacting, degrading and depleting Montana’s environment and natural resources...”; and “[a]ctions taken by the state to prevent further contributions to climate change will have significant health benefits to plaintiffs.”

The Judge determined that state government actions to permit/advance fossil fuel extraction, processing, transportation, and consumption were releasing “substantial” levels of greenhouse gas emissions into the atmosphere, contributing to climate change. The judge confirmed that state agencies had not considered or disclosed the greenhouse gas emissions or climate change impacts in their environmental reviews. And the Judge determined that the state had been approving, permitting and licensing projects that release greenhouse gas emissions without considering how those additional emissions will contribute to climate change or how their release will be “consistent with the standards the Montana constitution imposes on the state to protect people’s rights.” The Judge confirmed that the greenhouse gas emissions released as the result of Montana government actions and decisions were contributing to anthropogenic climate change and causing harm to Montana’s environment, residents and youth. Citing expert testimony, the Judge also acknowledged that the state had “abundant renewable energy resources that can provide enough energy to power Montana’s energy needs for all purposes in 2050.”

The Judge determined that the Youth Plaintiffs had demonstrated they were injured by the state’s failure to consider greenhouse gas emissions and climate change and therefore had standing to pursue their constitutional claims. Their injuries included harm to their “physical and mental health, homes and

property, recreational, spiritual, and aesthetic interests, and tribal and cultural traditions, economic security, and happiness.” And the court confirmed that these injuries were ongoing.

With regards to the climate focus of the legal action, Judge Seeley was very clear: “climate is included in the ‘clean and healthful environment’ and ‘environmental life support system’” protected by Articles II and IX of the Montana state constitution; and that “Montana’s climate, environment and natural resources are unconstitutionally degraded and depleted due to the current atmospheric concentration of [greenhouse gas emissions] and climate change.” And this right to a clean and healthful environment, protected by Article II of the constitution, allows the Youth Plaintiffs to obtain equitable relief to prevent the harm, not simply to address it after the harms have been inflicted.

MEPA is a primary vehicle by which the state fulfills its constitutional obligations and protects the environmental rights of Montanans. The limitations placed on MEPA prevent the state from meeting its affirmative obligation to protect the peoples’ environmental rights and the state’s natural resources from unreasonable depletion. As a result, the provisions at issue “unconstitutionally contribut[es] to the degradation of Montana’s environment and natural resources [and] ... deprive[s] Plaintiffs of their constitutionally guaranteed rights” to a clean and healthful environment, and protection of the state’s natural resources and environmental life support system.

Judge Seeley’s opinion made clear that the right to a “clean and healthful” environment “prohibits environmental degradation that causes ill health or physical endangerment and unreasonable degradation or depletion of Montana’s natural resources” for present and future generations.

The constitutional obligation to protect the right to a clean and healthful environment includes both a duty to prohibit violation of the constitutional mandate, but also an affirmative duty upon government to take “active steps to realize the right.” Creating an affirmative duty to ensure environmental rights are protected is an important legal recognition that strengthens the ability and obligation of Montana state government to address environmental protection, including climate change, proactively.

Judge Seeley determined that pursuant to Article IX Section 1 of the Montana constitution that the state had an obligation to provide “adequate remedies for the protection of the environmental life support system from degradation” and to “provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.” A legislative limitation on the court’s ability to vacate or enjoin government action taken in violation of MEPA “eliminates MEPA litigants’ remedies that prevent irreversible degradation of the environment.” This remedial limitation within MEPA was determined to be unconstitutional.

Central to the plaintiffs’ claims, Judge Seeley ruled that the “Climate Change Exemption” within the Montana Environmental Policy Act (MEPA) conflicts with the state’s affirmative constitutional obligation to protect environmental rights and natural resources. The Judge determined that the state’s failure to consider GHG emissions and climate impacts also *contributes* to environmental degradation, thereby depriving the youth plaintiffs of their rights under Article II Section 3 to a clean and healthful environment and pursuant to Article IX Section 1.

By declaring the legislation, which prohibited state consideration of the climate changing ramifications of its actions and decisions, to be unconstitutional, Judge Seeley’s decision not only opens the door to consideration of climate change as part of future government action, but when this determination is

considered in light of other Montana legal precedent, should ensure that government must consider the climate changing ramifications of their actions in order to fulfill their environmental protection obligations pursuant to law, regulation and the constitution.

Judge Seeley made clear, as part of its constitutional authority and obligation, the state including its agencies, “do have discretion to deny permits for fossil fuel activities that would result in unconstitutional levels of GHG emissions, unconstitutional degradation and depletion of Montana’s environment and natural resources, or infringement of the constitutional rights of Montanans and Youth Plaintiffs.”

Additional significant elements of Judge Seeley’s decision:

- ✓ The right to a clean and healthful environment found in Article II Section 3 of the state constitution is a fundamental right, and therefore is subject to legal strict scrutiny, and can only be infringed upon if the “state establishes a compelling state interest and the action is narrowly tailored to effectuate that interest.” The state did not demonstrate that the limitation on the consideration of climate change served any compelling state interest.
- ✓ The Montana legislature cannot eliminate remedies that prevent irreversible degradation of the environment in the absence of a compelling state interest because it is obligated under Article IX, Section 1 to provide adequate remedies to protect the environmental life support system from degradation and to prevent unreasonable depletion and degradation of natural resources.
- ✓ The decision referenced previous legal precedent making clear that the “clean and healthful” language in the constitution is “forward looking” and “preventative” which ensures the right and ability of Montanans to challenge actions that result in a constitutional violation, but also to take action that will prevent harm before it actually takes place.
- ✓ Citing the constitutional history, the decision highlighted that the “clean and healthful” language also creates an obligation to enhance the quality of Montana’s environment.
- ✓ While it would exceed the court’s authority to grant the Youth Plaintiff’s request that the court order the state to develop and implement a remedial plan with regards to the climate, and to maintain jurisdiction until the plan was fully implemented, the court did have authority to grant declaratory and/or injunctive relief that could be used to stop an unconstitutional violation of the identified environmental rights.
- ✓ It was appropriate for the Youth Plaintiffs to pursue this case in court without first having to exhaust administrative remedies.
- ✓ The court did not need to render an opinion on whether or not the constitutional language at issue in Article II Section 3 and Article IX Section 1 are self-executing given that the legislature took action that implicated the constitutional rights/obligations and therefore the court was free to render a determination on the constitutionality of those acts.