FILED
06/05/2023
Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA
Case Number: OP 23-0311

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. _______________

STATE OF MONTANA, et al.,

Petitioners,

v.

FIRST JUDICIAL DISTRICT COURT, LEWUS AND CLARK COUNTY, HON. KATHY SEELEY,

Respondent.

EMERGENCY PETITION FOR WRIT OF SUPERVISORY CONTROL AND STAY OF JUNE 12, 2023 TRIAL

Austin Knudsen
Montana Attorney General
Michael Russell
Thane Johnson
Assistant Attorneys General
MONTANA DEPT. OF JUSTICE
PO Box 201401
Helena, MT 59620-1401
Phone: 406-444-2026
michael.russell@mt.gov

Mark L. Stermitz
CROWLEY FLECK, PLLP
305 S. 4th Street E., Suite 100
Missoula, MT 59801-2701
Telephone: (406) 523-3600
mstermitz@crowleyfleck.com

Emily Jones
Special Assistant Attorney General
JONES LAW FIRM, PLLC
115 N. Broadway, Suite 410
Billings, MT 59101
Phone: 406-384-7990
emily@joneslawmt.com

ATTORNEYS FOR PETITIONERS

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF THE ISSUES 1

INTRODUCTION 2

STATEMENT OF THE CASE 3

I. NATURE OF THE CASE 3

II. RELEVANT PROCEDURAL HISTORY 5

I. STANDARD OF REVIEW 8

II. A TRIAL WILL NOT ELUCIDATE FACTS THAT COULD POSSIBLY SUPPORT AUTHORITY TO GRANT THE RELIEF PLAINTIFFS SEEK. 9

A. STRIKING DOWN A MEPA PROVISION WILL NOT SUPPLY GHG REGULATION AUTHORITY TO STATE PERMITTING AGENCIES. 9

B. SUPERVISORY CONTROL IS NECESSARY TO PREVENT A TRIAL EITHER ABOUT A FORMER LAW THAT NO LONGER EXISTS OR A NEW LAW THAT HAS NOT BEEN PLEADED OR FULLY LITIGATED. 13

C. THE FACTS FOR TRIAL ARE UNTETHERED FROM ANY LEGAL CLAIM BEFORE THE COURT 15

D. THIS COURT SHOULD ORDER AN EMERGENCY STAY OF TRIAL. 16

CONCLUSION 16

CERTIFICATE OF COMPLIANCE 18

APPENDIX 19

TABLE OF AUTHORITIES

Cases

Bitterrooters for Planning, Inc. v. Montana Dep't. of Environmental Quality,
2017 MT 222, 388 Mont. 453, 401 P.3d 712 12

Broad Reach Power, LLC v. Mont. Dep't. of Pub. Serv. Reg., Pub. Serv. Comm'n.,
2022 MT 227, 410 Mont. 450, 520 P.3d 301 14

Juliana v. United States,
947 F.3d 1159 (9th Cir. 2020) 5, 6

Mont. Wilderness Ass'n v. Bd. of Health & Env't. Sciences,
171 Mont. 477, 559 P.2d 1157 (1976) 11

Plumb v. Fourth Judicial Dist. Court,
Missoula Co., 279 Mont. 363, 927 P.2d 1011 (1996) 8

Pompeys Pillar Historical Ass'n v. Mont. Dep't. of Environmental Quality,
2002 MT 352, 313 Mont. 401, 61 P.3d 148 11

State ex rel. First Bank Sys. *v. Dist. Court*,
240 Mont. 77, 782 P.2d 1260 (1989) 8

Sweeney v. Dayton,
2018 MT 95, 391 Mont. 224, 416 P.3d 187 16

Truman v. Mont. Eleventh Jud. Dist. Ct.,
2003 MT 91, ¶ 13, 315 Mont. 165, 68 P.3d 654 8

Water For Flathead's Future v. Mont. DEQ,
2023 MT 86, 2023 WL 3476980 (May 16, 2023) 11

Statutes

Mont. Code Ann. § 2-4-315 4

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

Mont. Code Ann. § 75-1-201(4)(a) 10, 11

Mont. Code Ann. § 75-2-101 12

Mont. Code Ann. § 90-4-1001(1)(c)–(g) 3

42 U.S.C. § 7401 12

Rules

Mont. R. App. P 14(3) 8, 16

Mont R. Civ. P. 12(h)(3) 2

STATEMENT OF THE ISSUES

1. The District Court has ordered a two-week trial to begin on June 12, 2023 on MEPA claims where the relevant statute was amended 3 weeks ago by the Montana Legislature. The current version has not been pleaded. Have Plaintiffs presented an actual controversy that would make declaratory relief and/or injunctive relief appropriate?

2. The District Court has ordered a two-week trial to determine whether the new version of § 75-1-201(2)(a), MCA, enacted on May 10, 2023, is facially unconstitutional. Should Plaintiffs' Complaint be dismissed for lack of justiciability, including, but not limited to, lack of subject matter jurisdiction?

3. Should the Plaintiff's Complaint be dismissed and the June 12, 2023 trial vacated because there is no remedy within the District Court's authority that can address Plaintiffs' claim or change the relevant legal circumstances?

4. The June 12, 2023 trial involves constitutional issues of state-wide importance. The nation is watching. Do the canons of threshold justiciability require dismissal of the amended unpled MEPA Provision and vacatur of the June 12, 2023 trial?

5. In the alternative, if Plaintiffs are permitted to amend their Complaint, do jurisprudential concerns of fairness and avoiding prejudice require the District Court to vacate the Scheduling Order and the trial to allow Defendants to conduct

discovery and file appropriate motions on Plaintiffs' amended claims under the amended MEPA statute?

INTRODUCTION

This case is receiving not just state-wide, but national attention[1] as purportedly the first case in the nation to go to trial on allegations that a State has damaged youth plaintiffs through its policies and laws related to greenhouse gases and climate change. There should be no trial, however, because there are no relevant facts to find, and there are no existing Montana laws or policies for the District Court to interpret, apply, or attempt to fashion some form of relief.

Black-letter law for threshold justiciability issues should have summarily disposed of this case. *E.g.*, Mont. R. Civ. P. 12(h)(3) (District Court must dismiss case if at any time it lacks subject matter jurisdiction). Although the District Court understands the passage of a bill by Montana Legislature—which became law on May 10, 2023—eliminated the only statutory language targeted by Plaintiffs' surviving claim, the District Court ordered a two-week bench trial starting June 12, 2023. The case that Plaintiffs originally filed—constitutional challenges to Montana's energy policy statute and to the Montana Environmental Policy Act

[1]*See e.g.* https://tinyurl.com/yckp5de4, "Why Montana is emerging as a much-watch climate battleground." (May 19, 2023, last accessed May 31, 2023); https://tinyurl.com/2wwkvx8a, "In Montana, It's Youth vs. the State in a Landmark Climate Case" (March 31, 2023, last accessed May 31, 2023).

(MEPA)—has been eclipsed by Legislative action repealing the former and dramatically altering the latter. The District Court has agreed that repealing the energy policy statute moots related claims and has dismissed them. However, the Court is erroneously headed to trial on claims challenging a former version of MEPA that no longer exists because of amendments by the Montana Legislature that became law on May 10, 2023.[2] In so doing, the District Court's orders contain clear errors of law and demonstrably erroneous factual assumptions. There is nothing left to try, and this Court should step in to prevent a massive expenditure of wasted time and resources by all concerned.

STATEMENT OF THE CASE

I. NATURE OF THE CASE

Plaintiffs are children and youth in Montana who at the inception of this lawsuit were between the ages of two and 18. App. 1, *passim*. Plaintiffs challenged the constitutionality of portions of the State Energy Policy, § 90-4-1001(1)(c)–(g), MCA and a provision in the Montana Environmental Policy Act ("MEPA"), § 75-1-201(2)(a), MCA, barring state agencies from considering potential environmental impacts beyond Montana's borders. Plaintiffs alleged these statutes contributed to climate change in derogation of Montana Constitutional provisions on the right to a

[2] Plaintiffs have not sought leave to amend their pleadings to include claims based on the new statute.

clean and healthful environment, *inter alia*. App. 1 at ¶¶ 211–251. Plaintiffs have pursued no claims or lawsuits against any State agency permitting process or MEPA review for a project or activity that involves the production, emission, or transportation of greenhouse gasses ("GHGs"). Nor have Plaintiffs petitioned any State agency to exercise its rule-making authority under the Montana Administrative Procedures Act. Mont. Code Ann. § 2-4-315.

In addressing the jurisdictional issues raised by the foregoing circumstances, Plaintiffs have asserted that the State has engaged in "aggregate acts" in the form of various decisions and statements by the Governor's Office (originally, Steve Bullock), the Montana Department of Transportation ("DOT"), the Montana Department of Environmental Quality ("DEQ"), the Montana Department of Natural Resources and Conservation ("DNRC"), and the Montana Public Service Commission ("PSC"). App. 1 at ¶ 118.

As to relief, Plaintiffs asked the District Court to: permanently enjoin Defendants from subjecting Plaintiffs to the Energy Policy, MEPA language, and the State's "aggregate acts"; require "Defendants to prepare a complete and accurate accounting of Montana's GHG emissions"; require "Defendants to develop a remedial plan or policies to effectuate reductions of GHG emissions in Montana"; appoint a special master to review the remedial plan; and issue "[a]n order retaining jurisdiction over this action until such time as Defendants

have fully complied with the orders of this Court." App. 1, Prayer for Relief at ¶¶ 5–9.[3]

II. RELEVANT PROCEDURAL HISTORY

To focus the Court's attention on the basic jurisdictional issues of standing and remedy obviously raised by Plaintiffs' claims, Defendants filed various motions earlier in the litigation. In April 2021, the District Court ruled on Defendants' motion to dismiss filed in August 2020. App. 2 (Order on Motion to Dismiss). The Court discussed the Ninth Circuit *Juliana* decision but found that there were sufficient facts in dispute regarding the State Energy Policy to deny the motion. App. 2 at 11–12. The District Court also denied Defendants' motion to dismiss the MEPA claims because of redressability issues. The District Court concluded that it does not have authority to grant injunctive relief, "including Plaintiffs' request for a remedial plan like in Juliana." *Id*. at 17. However, the District Court also decided that it could redress the harms alleged by Plaintiffs through an order for declaratory relief:

---

[3]A nearly identical federal lawsuit seeking an order for a remedial plan to reduce GHG emissions was rejected by the Ninth Circuit Court of Appeals in 2020. *See Juliana v. United States*, 947 F.3d 1159, 1171 (9th Cir. 2020) ("*Juliana*") ("There is much to recommend the adoption of a comprehensive scheme to decrease fossil fuel emissions and combat climate change, both as a policy matter in general and a matter of national survival in particular. But it is beyond the power of an Article III court to order, design, supervise, or implement the plaintiffs' requested remedial plan. As the opinions of their experts make plain, any effective plan would necessarily require a host of complex policy decisions entrusted, for better or worse, to the wisdom and discretion of the executive and legislative branches.")

> According to Youth Plaintiffs, their Complaint establishes that the State Energy Policy and Climate Change Exception to MEPA contributed to their injuries. Therefore, if the court declares that the State Energy Policy and Climate Change Exception to MEPA are unconstitutional, this "by itself, [would] suffice to establish redressability, regardless of whether additional injunctive relief was issued."

Id. quoting Plaintiffs' opposing brief. Thus, the District Court then and now is of the opinion that declaring the State Energy Policy and § 75-1-201(2)(a) unconstitutional "would partially remove or correct the injuries suffered by Youth Plaintiffs." *Id*. Although the District Court recognized that ordering a remedial plan and accounting of GHG would violate the political question doctrine which "should be left to the wisdom and discretion of the legislative or administrative branches," it agreed with Plaintiffs that it could grant injunctive relief without ordering an injunctive remedy. *Id*. at 21, quoting *Juliana*, 947 F.3d at 1171.

Recently the Montana Legislature significantly altered the relevant legal landscape in a big way. First, it passed HB 170, repealing the State Energy Policy. App. 3. On March 16, 2023, Governor Gianforte signed the bill into law. App. 4. Next, the Legislature passed HB 971, which amended § 75-1-201(2)(a), MCA to explicitly prohibit the State from considering greenhouse gases in MEPA review. App. 5.

The State filed a motion to dismiss the State Energy Policy claims, which the District Court granted, "without prejudice for redressability and prudential issues." App. 6 at 4. (Or. on Def.'s Mot. to Dismiss for Mootness and for SJ, "May 23

Order”). The District Court stated that “the relief contemplated by the Court has always been limited to declaratory judgment on the constitutionality of the ‘statutory provisions’ and an injunction on the enforcement of those provisions.” *Id*. at 3–4. Given that § 90-4-1001, the statute the District Court was asked to enjoin, no longer existed, the District Court granted Defendants’ motion to dismiss Plaintiffs’ claims that were based on the repealed statute.

The District Court also considered the Defendants’ already-pending motion for summary judgment on Plaintiffs MEPA claims against the former version of the statute.[4] The District Court rejected all of Defendants’ arguments regarding fundamental requirements of standing and redressability necessary to the Court’s legitimate exercise of judicial authority. As is discussed in detail in the argument that follows, in denying these jurisdictional challenges, the District Court misapplied well-established, traditional sideboards on jurisdictional prerequisites, misread or misapprehended the pleadings and claims. The Court committed to having a trial on Plaintiffs’ MEPA claim even when it is readily apparent it lacks the authority to issue

---

[4]Defendants have also filed a dispositive motion based on the newer version of MEPA, to which Plaintiffs responded on June 1. The District Court did not directly address that motion in its May 23 Order, but it did order a trial on the MEPA version that no longer exists in strong language suggesting the outcome of the HB 971 version. HB 971 was signed into law on 5/10, and on that date, Defendants filed a Notice of Supplemental Authority so advising the Court. Defendants have no control over the timing of the Legislature’s business, and the restricted time to deal with ramifications of the new law on the heels of the District Court’s May 23 Order have given rise to this emergency request.

a declaratory judgment on a MEPA provision that no longer exists or to even "partially remove or correct the injuries suffered by Youth Plaintiffs."

ARGUMENT

I. STANDARD OF REVIEW

This Court exercises supervisory control "to direct the course of litigation where the district court is proceeding based on a mistake of law, which if uncorrected, would cause significant injustice for which an appeal is an inadequate remedy." *Truman v. Mont. Eleventh Jud. Dist. Ct.*, 2003 MT 91, ¶ 13, 315 Mont. 165, 68 P.3d 654; Mont. R. App. P. 14(3). "Judicial economy and inevitable procedural entanglements" are appropriate reasons for this Court to issue a writ of supervisory control (*id*. ¶ 15), as is prevention of extended and needless litigation. *State ex rel. First Bank Sys. v. Dist. Court*, 240 Mont. 77, 84–85, 782 P.2d 1260, 1264 (1989).

The exercise of supervisory control is appropriate when **any** of the following three factors are present: "(1) Constitutional issues of major state-wide importance are involved; (2) The case involves purely legal questions of statutory and constitutional construction; and (3) Urgency and emergency factors exist, making the normal appeal process inadequate." *Plumb v. Fourth Judicial Dist. Court, Missoula Co.*, 279 Mont. 363, 369, 927 P.2d 1011, 1015 (1996) (superseded by statute on other grounds); Mont. R. App. P. 14(3).

II. A TRIAL WILL NOT ELUCIDATE FACTS THAT COULD POSSIBLY SUPPORT AUTHORITY TO GRANT THE RELIEF PLAINTIFFS SEEK.

A. STRIKING DOWN A MEPA PROVISION WILL NOT SUPPLY GHG REGULATION AUTHORITY TO STATE PERMITTING AGENCIES.

The District Court has said that

> [i]n the judgment of the Court, the following material facts are in dispute:
>
> 1. Whether Plaintiffs' injuries are mischaracterized or inaccurate.
> 2. Whether Montana's GHG emissions can be measured incrementally.
> 3. Whether climate change impacts to Montana's environment can be measured incrementally.
> 4. Whether a favorable judgment will influence the State's conduct and alleviate Plaintiffs' injuries or prevent further injury.

App. 6 at 5–6.

Put simply, it does not matter whether these or any other facts are genuinely disputed, because the District Court does not have the power to fashion relief under MEPA that will change them. The Court's description of what the impending trial will accomplish derives from a basic misunderstanding of the purposes and functions of MEPA. In the May 23 Order, the District Court states:

> Based on the pleadings and discovery, there appears to be a reasonably close causal relationship between the State's *permitting of fossil fuel activities under MEPA*, GHG emissions, climate change, and Plaintiffs' alleged injuries. *Furthermore, the State has the authority to regulate GHG emissions and climate impacts by regulating fossil fuel activities that occur in Montana*.

App. 6 at 12. (Emphasis added). These statements represent the core of the District Court's erroneous approach to basic jurisdictional issues. First, as is discussed in detail hereafter, the State permits nothing under MEPA because it is not a permitting statute. Second, the State absolutely lacks the authority to regulate GHG emissions and cannot cite authority to the contrary.

Putting aside for the moment the problem that the pleadings challenge a provision of MEPA that no longer exists, the District Court's characterization of Montana law on environmental permitting is critically mistaken. The Court states:

> Those statutes [Titles 75 and 82] clearly regulate fossil fuel activities, and the State's agents could alleviate the environmental effects of climate change through the lawful exercise of their authority if they were allowed to consider GHG emissions and climate impacts during MEPA review.

App. 6 at 13. **Striking down either the previous or current version of MEPA's language regarding or implicating GHG emissions will not give Montana agencies any independent authority to regulate GHG emissions; it will simply leave a void in MEPA, the only statute at issue in this case**. The District Court does not appreciate the inarguable purpose of MEPA, which does not include issuing permits. The Montana Legislature enacted MEPA in 1971. *See* 1971 Mont. Laws ch. 238. In 2001, MEPA was amended to state, "The agency may not withhold, deny, or impose conditions on any permit or other authority to act based on parts 1 through 3 of this chapter." 2001 Mont. Laws ch. 268 (codified at Mont. Code Ann. § 75-1-

201(4)(a)). The purpose of this 2001 amendment was to “clarify that MEPA is a procedural act and not a substantive act.” *Hearing on HB 473 Before the Mont. H. Comm. on Nat. Resources*, 57th Reg. Sess p. 12 (Feb. 12, 2001). *See* App. 8.

This Court’s decisions have without fail recognized the procedural purpose of MEPA, most recently in *Water For Flathead’s Future v. Mont. DEQ*, 2023 MT 86, ¶ 19, 2023 WL 3476980 (May 16, 2023) (“MEPA, like its federal counterpart…is ‘essentially procedural.’”) A MEPA environmental assessment, “although conducted contemporaneously with the air quality review for the air quality permit, was not part of the air quality permit process itself.” *Pompeys Pillar Historical Ass’n v. Mont. Dep’t. of Environmental Quality*, 2002 MT 352, ¶ 18, 313 Mont. 401, 61 P.3d 148. “Nowhere in the MEPA is found any regulatory language.” *Mont. Wilderness Ass’n v. Bd. of Health & Env’t. Sciences*, 171 Mont. 477, 485, 559 P.2d 1157, 1161 (1976). An “agency may not withhold, deny, or impose conditions on any permit or other authority to act” based on its MEPA analysis. Mont. Code Ann. § 75-1-201(4)(a).

Moreover, the District Court’s belief that “the State has the authority to regulate GHG emissions,” is simply wrong. No Montana statute gives any agency that authority, and none accompanies the Court’s statement or Plaintiffs’ briefing. Defendants should not be compelled prove this negative. Suffice to say, for example,

that Montana's Clean Air Act (Mont. Code Ann. § 75-2-101, et seq.) which regulates air pollutants as defined under the federal Clean Air Act, 42 U.S.C. § 7401, et seq. does not include authority to regulate carbon dioxide or any other GHG.

If the District Court's intent is to force Montana to regulate GHG, that would require amending the Clean Air Act or one of the other permitting statutes. In any case, having a trial is not going to change or clarify any of this analysis, which is purely a legal one. Moreover, striking down a MEPA provision will not provide authority compelling agencies to analyze GHG in permitting decisions where no statutory authority exists:

> We hold that, for purposes of MEPA, an agency action is a legal cause of an environmental effect only if the agency can prevent the effect through the lawful exercise of its independent authority. As in *Public Citizen*, requiring a state agency to consider environmental impacts it has no authority to lawfully prevent would not serve MEPA's purposes of ensuring that agencies and the interested public have sufficient information regarding relevant environmental impacts to inform the lawful exercise of agency authority.

Bitterrooters for Planning, Inc. v. Montana Dep't. of Environmental Quality, 2017 MT 222, ¶ 33, 388 Mont. 453, 401 P.3d 712. As this Court said in language just preceding the quote above, MEPA "requires a reasonably close causal relationship between the triggering state action and the subject environmental effect." *Id*. The District Court's statement that this relationship exists is inconsistent with Montana law and does not make it so.

Regarding redressability, the District Court has said that "Plaintiffs only need to show their injuries will be effectively alleviated, remedied, or prevented by a favorable ruling." App. 2 at 15. (Citations omitted). While in theory that is correct, the District Court erroneously believes that invalidating or enjoining § 75-1-201(2)(a) will have that effect, because it would not compel State agencies to begin to analyze GHG or climate change in permitting decisions. Paradoxically, the District Court understands that it "cannot force the State to conduct that analysis [effects of burning coal] before permitting a new mine." App. 6 at 13. However, the Court goes on to say that "it can strike down a statute prohibiting it." *Id*. Striking down the MEPA statute would not remove a barrier to agency GHG permitting decisions, because the agencies do not have that authority in the first place. In addition, as the following section discusses, invalidating this MEPA provision is impossible because the statute no longer exists.

B. SUPERVISORY CONTROL IS NECESSARY TO PREVENT A TRIAL EITHER ABOUT A FORMER LAW THAT NO LONGER EXISTS OR A NEW LAW THAT HAS NOT BEEN PLEADED OR FULLY LITIGATED.

Plaintiffs' Complaint challenges the constitutionality of the MEPA language, § 75-1-201(2)(a). App. 1, *passim*. The Montana Legislature amended that section through HB 971, replacing the MEPA prohibition on reviewing "actual or potential impacts beyond Montana's borders" with a prohibition on evaluating "greenhouse gas emissions and corresponding impacts to the climate" within or beyond Montana.

App. 5. Plaintiffs are pursuing a <u>facial</u> constitutional challenge to the MEPA language. App. 1 at 102–103. Thus, to go forward with a trial, or more basically to suggest that the District Court has jurisdiction at all, means allowing Plaintiffs to argue that a statute is unconstitutional on its face when the offending statutory language does not exist. A more fundamental jurisdictional issue is hard to imagine.[5]

On the other hand, Plaintiffs have pleaded no claim against the MEPA language codified by HB 971. They have not moved to seek leave to amend their complaint, and the District Court is apparently not going to require it. The District Court's view is that "the relief contemplated by the Court has always been limited to declaratory judgment on the constitutionality of the 'statutory provisions' and an injunction on the enforcement of those provisions." App. 7 at 3–4 (referring to the energy policy). If that is so, the relief the District Court "has always" contemplated no longer exists, unless it refers to a claim that has not been pleaded, the other side of the same problematic jurisdictional coin.

The extent to which HB 971 changed MEPA should not be downplayed. Under §75-1-201(2)(a), the provision restricting Montana's ability to review actual or potential impacts beyond Montana's borders (i.e., regional, national, or global

---

[5]The fact that Plaintiffs bring a <u>facial</u> constitutional challenge further highlights the questionable need for a trial at all. *See Broad Reach Power, LLC v. Mont. Dep't. of Pub. Serv. Reg., Pub. Serv. Comm'n.*, 2022 MT 227, ¶ 11, 410 Mont. 450, 520 P.3d 301 ("[F]acial challenges are not dependent on the facts of a particular case…")

impacts) was replaced with a more specific restriction on evaluating greenhouse gas emissions and climate change. The implications of the change in language have not been determined by the District Court. Plaintiffs will argue they should be granted leave to amend their Complaint, which the District Court could do, but unless the trial is vacated and discovery is permitted, amending the Complaint will exacerbate, not solve, the issues presented in this application.

C. THE FACTS FOR TRIAL ARE UNTETHERED FROM ANY LEGAL CLAIM BEFORE THE COURT.

The trial is set to go forward on the four factual areas identified by the District Court (listed at the outset of this brief), yet none of those areas has any probative value on the constitutionality of the current MEPA language or potential relief the District Court could legally order. Questions about the extent of Plaintiffs' injuries, GHG emissions, and Montana's contribution (or lack thereof) to global climate change may be academically interesting or important in a policy or political sense, but the answers to those questions will not change the fact that MEPA does not permit anything, regardless of the version under scrutiny. Therefore, even if the District Court enjoins any version of MEPA, it will have neither a prohibitive nor a mandatory impact on GHG "regulation", i.e. permitting decisions or authority, in Montana.

By requiring a trial on these questions that have no bearing on the State's legal authority to regulate GHGs, the District Court is proceeding under a mistake of law

that will cause a gross injustice in the form of a needless two week "show" trial. A writ of supervisory control is appropriate in circumstances like these. *See Sweeney v. Dayton*, 2018 MT 95, ¶ 6, 391 Mont. 224, 416 P.3d 187); Mont. R. App. P. 14(3).

D. THIS COURT SHOULD ORDER AN EMERGENCY STAY OF TRIAL.

Not only are the normal appeal processes insufficient to prevent a colossal investment of time and resources, the circumstances (a June 12, 2023 trial date) loom. The issues are of sufficient importance—indeed of constitutional state-wide importance—to warrant additional time to ensure no party is subjected to a gross injustice in the form of an unnecessary trial. Furthermore, there has not been sufficient time to analyze how HB 971 impacts the case. Even if Plaintiffs obtain leave of court to pursue claims against the existing MEPA provisions, erroneous jurisdictional determinations will persist. If the District Court's rulings about the purpose and effect of MEPA as a permitting statute are any indication, however, the trial will not be delayed without intervention by this Court.

CONCLUSION

For the reasons discussed in this application, the Court should enter an order immediately staying the June 12, 2023 trial date, and exercise its original jurisdiction for supervisory control.

DATED this 5th day of June, 2023.

Austin Knudsen
MONTANA ATTORNEY GENERAL

/s/ Michael Russell
Michael Russell
Thane Johnson
Assistant Attorneys General
MONTANA DEPARTMENT OF JUSTICE
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401

Emily Jones
Special Assistant Attorney General
JONES LAW FIRM, PLLC
115 N. Broadway, Suite 410
Billings, MT 59101

Mark L. Stermitz
CROWLEY FLECK, PLLP
305 S. 4th Street E., Suite 100
Missoula, MT 59801-2701

ATTORNEY FOR DEFENDANTS

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify that this Petition is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 3,995 words, excluding certificate of service and certificate of compliance.

/s/ Michael Russell
Michael Russell

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. ___________

STATE OF MONTANA, et al.,

Petitioners,

v.

FIRST JUDICIAL DISTRICT COURT, LEWUS AND CLARK COUNTY,
HON. KATHY SEELEY,

Respondent.

APPENDICES

Complaint-Filed March 13, 2020 (D.C. Doc. 1) .... Appendix 1

Order on Motion to Dismiss-Dated August 4, 2021 (D.C. Doc. 46) .... Appendix 2

House Bill 170 .... Appendix 3

Details of Progress House Bill 170 .... Appendix 4

House Bill 971 .... Appendix 5

Order on Defendant's Motion to Dismiss-Dated 5/23/2023
(D.C. Doc 379) .... Appendix 6

Montana Legislative Committee History .... Appendix 7

CERTIFICATE OF SERVICE

I, Michael D. Russell, hereby certify that I have served true and accurate copies of the foregoing Petition - Writ to the following on 06-05-2023:

Mark L. Stermitz (Attorney)
304 South 4th St. East
Suite 100
Missoula MT 59801
Representing: MT Dept. of Natural Resources, Governor, Greg Gianforte, MT Dept. of Environmental Quality, MT Dept. of Transportation, MT Public Service Commission, null
Service Method: eService

Thane P. Johnson (Govt Attorney)
215 N SANDERS ST
P.O. Box 201401
HELENA MT 59620-1401
Representing: MT Dept. of Natural Resources, Governor, Greg Gianforte, MT Dept. of Environmental Quality, MT Dept. of Transportation, MT Public Service Commission, null
Service Method: eService

Emily Jones (Attorney)
115 North Broadway
Suite 410
Billings MT 59101
Representing: MT Dept. of Natural Resources, Governor, Greg Gianforte, MT Dept. of Environmental Quality, MT Dept. of Transportation, MT Public Service Commission, null
Service Method: eService

Kathy Seeley (Respondent)
228 Broadway, 2nd Floor
Helena MT 59601
Representing: Self-Represented
Service Method: Conventional

Nathan Bellinger (Attorney)
1216 Lincoln St
Eugene OR 97401
Service Method: eService
E-mail Address: nate@ourchildrenstrust.org

Melissa Anne Hornbein (Attorney)
103 Reeder's Alley
Helena MT 59601
Service Method: eService
E-mail Address: hornbein@westernlaw.org

Barbara L Chillcott (Attorney)
103 Reeder's Alley
Helena MT 59601
Service Method: eService
E-mail Address: chillcott@westernlaw.org

Roger M. Sullivan (Attorney)
345 1st Avenue E
MT
Kalispell MT 59901
Service Method: eService
E-mail Address: rsullivan@mcgarveylaw.com

Andrea K. Rodgers (Attorney)
3026 NW Esplanade
Seattle WA 98117
Service Method: eService
E-mail Address: andrea@ourchildrenstrust.org

Philip L. Gregory (Attorney)
1250 Godetia Drive
Woodside CA 94062
Service Method: eService
E-mail Address: pgregory@gregorylawgroup.com

Dustin Alan Richard Leftridge (Attorney)
345 First Avenue East
Montana
Kalispell MT 59901
Service Method: eService
E-mail Address: dleftridge@mcgarveylaw.com

Electronically signed by Dia Lang on behalf of Michael D. Russell
Dated: 06-05-2023