

Three Environmental Trends Illustrated by Montana Kids' Climate Decision

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One might not expect that a climate-change case filed by a group of children could succeed.

This week, a Montana state court decision in this summer's hottest climate-focused case, [*Held v. State of Montana*](#), finding in favor of a group of children ranging in age from two to 18 when the complaint was filed who sought to compel Montana regulators to abide by "Green Amendment"-type language added to the Montana Constitution in 1972.

Formally, *Held* stands for the narrow proposition that the Montana Legislature's attempt to carve climate issues out of Montana's "Green Amendment"-type language was constitutionally impermissible as it eliminated by statute Montanans' constitutionally granted right to secure equitable relief necessary to protect the environment. More broadly, the decision — [likely to be appealed](#) — represents a rare win for activist plaintiffs seeking to use rights-based theories to address environmental concerns.

Discussing three separate trends in the environmental space is helpful related to *Held*: increased public focus on climate, increased state and local engagement on policy solutions, and the potential shift overall shift in governance in the climate space.

We discuss each below.

Relevant Background

In 1971, Montana passed the Montana Environmental Policy Act (MEPA) and, in 1972, added what is now often called the "Green Amendment" to its state constitution. MEPA requires preparation of environmental impact statements on "major actions of state government significantly affecting the quality of the human environment." (See generally [here](#).) MEPA established a process by which Montana can regulatorily anticipate potential harms to the environment instead of just reacting to mitigate them.

Montana's 1972 Constitutional amendment provided unique, though not unprecedented, language related to environmental protection. (We discuss similar language [here](#).) The relevant provision provides that the "state and each person shall maintain and improve a clean and healthful

environment in Montana for present and future generations.” Additionally, the right to a clean and healthful environment is listed in Montana’s Bill of Rights. In effect, this language codifies a “Public Trust” doctrine as part of Montana law. In the view of the *Held* court, this “forward-looking and preventative language . . . clearly indicates that Montanans have a right not only to reactive measures after [environmental harm] . . . but to be free of its occurrence in the first place.”

In May 2023, Montana’s governor signed into law a bill explicitly prohibiting Montana agencies from considering “an evaluation of greenhouse gas emissions and corresponding impacts to the climate” in their MEPA reviews.

The plaintiffs’ complaint challenged the constitutionality of Montana’s fossil-fuel based energy system, which they allege contributes to climate change in violation of their rights to their state constitutional rights. Leading up to the recent decision, the plaintiffs requested declaratory relief setting forth their constitutional rights; a declaration of law that Montana’s fossil-fuel based energy system was unconstitutional; and declaring the recent MEPA limitation signed by the governor intended to carve out climate issues from MEPA to be unconstitutional. A Montana district court granted the relief the plaintiffs’ requested.

Environmental Takeaways

Climate and Public Attention

Increased attention to climate issues is certain to be followed by increased scrutiny: climate issues have become increasingly hard to ignore. Wildfires – from Hawaii to Canada – have been in the press all summer. Southern California may see its first hurricane.

Stories generate interest and interest creates scrutiny. The *Held* complaint focused in the plaintiffs’ stories, and these stories are repeated in the court’s factual findings here. Now amplified by a decision which enjoins provisions of Montana state laws, these stories will likely generate more scrutiny.

Held isn’t the first case brought by young climate activists and likely won’t be the last. Before *Held*, *Juliana v. United States* (discussed [here](#)) was the most notable. But unlike *Juliana*, the *Held* plaintiffs prevailed, at least for now.

Increased State and Local Engagement on Climate

While the *Held* decision is an outlier relying on Montana-specific constitutional language, state and local governments are increasingly legislating and regulating in various ways to advance green issues (e.g., [encouraging development of renewable energy](#), localities [banning use of fossil fuels in new construction](#)). State courts are currently evaluating tort cases brought by municipalities against fossil fuel companies. (See [here](#).) The success of the *Held* plaintiffs is likely to generate copycat state-law cases in other jurisdictions.

Shifts in Policy Governance

Finally, *Held* may illustrate a shift in who makes climate-related decisions, and how they are made. Federal environmental policy is process-based and federal regulators have been unable to meaningfully address climate issues. (See our discussion of last year’s *West Virginia v. EPA* [here](#).) The combination of state court decisions like *Held*, private sector actors engaged with climate-related

issues under ESG-related frameworks (see [here](#)), and parties using federal IRA subsidies change the framework of how climate goals may be achieved.

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