

AUGUST 27TH 1:00PM ET

#### Introduction

#### Kristen Soares



State Climate Policy Network Manager



#### **State Climate Policy Network**



#### Network of **15,000+**

- State and local elected officials
- → NGO advocates
- → Researchers
- State agency staffers
- → Organizers and activists
- → Business leaders

... working on state climate policy



#### **Pro Bono Policy Assistance**

We specialize in state climate policy design and analysis. Reach out to <a href="mailto:kristen@climate-xchange.org">kristen@climate-xchange.org</a> with your requests on:

- Example states and model rules for a given policy
- Gap analysis of your state's climate policy landscape
- Connections to other actors working on similar issues



#### Environmental Rights Amendments: A Constitutional Approach to State Climate Policy



Sara Zimmerman
Founder and Executive Director of
the Climate Equity Policy Center



**Maya K. van Rossum**Founder and Leader of Green
Amendments for the Generations



Mat dos Santos
Co-Executive Director and
General Counsel at
Our Children's Trust

#### **Agenda**

- Overview: Environmental Rights Amendments
- 2. Spotlight: Green Amendments
- 3. Insights and Lessons Learned: Montana and Hawai'i
- 4. Q&A



#### **Speaker**

Sara Zimmerman



Founder and Executive Director
Climate Equity Policy Center





**Environmental Rights Amendments Overview & Opportunities** 

# Climate Equity Policy Center

We're a national nonprofit founded in 2020 that supports local communities in adopting & implementing climate policies that advance fair, healthy & equitable communities.

- We work with local, state & national advocates, health professionals, and policymakers
- We support communities in developing and adopting climate policies that center equity through legal and policy tools and research



#### Agenda

- Intro to environmental rights amendments
- Why are they important?
- Current landscape
- Considerations
- Pathways to adoption

# Introduction to Environmental Rights Amendments

#### **Overview**

- Environmental rights amendments have great potential
- Currently seven states have some kind of environmental rights amendment
- Mostly adopted in the 1970s
- For a long time, fairly limited in effect
- Interest and effect are now increasing
- In the constitution

#### What does an environmental rights amendment look like?

"Each person shall have a right to clean air and water, and a healthful environment."

New York

"Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources. Any person may enforce this right against any party, public or private, through appropriate legal proceedings, subject to reasonable limitations and regulation as provided by law."

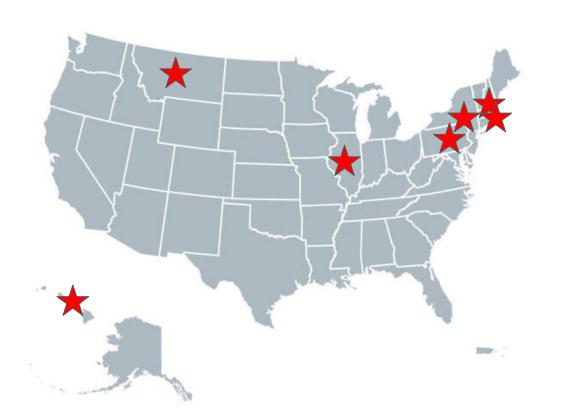
Hawaii

#### Why environmental rights amendments?

- Simple, powerful tool for giving legal weight to a sense that many people have: the right to a healthy environment
- With federal climate, environmental, and environmental justice protections currently unavailable, establishing strong state protections is essential
- Environmental rights amendments have tremendous potential:
  - Strong statement by people of a state
  - Directive to governor, legislature, local governments
  - Powerful court victories possible

#### Current Landscape

#### **Existing Environmental Rights Amendments**



- Hawaii (1978)
- Illinois (1970)
- Massachusetts (1972)
- Montana (1972)
- New York (2021)
- Pennsylvania (1971)
- Rhode Island (1986)

#### Analysis of Text & Legal Interpretations

- Vary widely in their strength and effect
- Have different provisions

POLICY CENTER		
Last update: Mar 2024	Background	
State	Text of Provision	Citation
Hawaii	"Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources. Any person may enforce this right against any party, public or private, through appropriate legal proceedings, subject to reasonable limitations and regulation as provided by law."	Haw. Const., Art. XI, § 9
Illinois	"SECTION 1. PUBLIC POLICY - LEGISLATIVE RESPONSIBILITY. The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy.  SECTION 2. RIGHTS OF INDIVIDUALS. Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law."	Article XI
Massachusetts	"The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose. The general court shall have the power to enact legislation necessary or expedient to protect such rights.  In the furtherance of the foregoing powers, the general court shall have the power to provide for the taking, upon payment of just compensation therefor, or for the acquisition by purchase or otherwise, of lands and easements or such other interests therein as may be deemed necessary to accomplish these purposes.  Lands and easements taken or acquired for such purposes shall not be used for other purposes or otherwise disposed of except by laws enacted by a two thirds vote, taken by yeas and nays, of each branch of the general court."	Mass. Constitution, Amendment 97
Montana	"All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities."	Montana Const., Art. II § 3
New York	"Each person shall have a right to clean air and water, and a healthful environment."	N.Y. Const., Art. I, § 16
Pennsylvania	"The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people."	Penn. Const. Art. I, § 27
Rhode Island	"The people shall continue to enjoy and freely exercise all the rights of fishery, and the privileges of the shore, to which they have been heretofore entitled under the charter and usages of this state, including but not limited to fishing from the shore, the gathering	Rhode Island Const.,

#### Considerations

#### **Legal considerations**

- As noted, some of the existing environmental rights amendments have been incredibly powerful, while others have been entirely sidelined
- Different interpretations due to drafting & to political/legal decisions
- Consider
  - What core rights?
  - Public trust language
  - Private right to sue
  - Other procedural language
- Some of what we are seeing with NY's amendment is that where details not included, courts are adopting narrow interpretations

#### Additional Considerations/ Challenges

- Budgetary effects/effects on affordability
- Effects on clean energy development





#### Pathways to Enactment

#### State by state assessment of process & political landscape

- Two main methods:
  - Some states allow citizen-proposed amendments to be put on the ballot by the people if enough people sign in support
  - All states allow the state legislature to propose constitutional amendments (almost all (except Delaware) then require those legislative amendments to be submitted to the voters)
- Additional procedural hoops exist in many states
- All existing environmental rights amendments were put on ballot by legislature, some as part of overall new constitutions, others as standalone amendments

#### What's required

If you want to pass an environmental rights amendment in your state:

- You'll need to explore your political climate, key issues, voter interest, allies and partners, funders, and state political opportunities.
- You'll also want to answer some logistical questions:
  - Are citizen constitutional ballot initiatives permitted?
  - What are signature requirements? Are there impediments or new rules that will impose challenges?
  - What are the requirements for legislatively referred constitutional ballot initiatives?
  - Which of these is more practical in light of the requirements,
     your political connections, advocacy/organizing strengths, etc?

#### **Environmental Rights Amendment Toolkit**



#### Model environmental rights amendment language



#### Legal memo



#### **Factsheets**





**Environmental Rights Amendments** 

#### Analyses of existing environmental rights amendments



FOLICY CENTER			
Last update: Mar 202	Background		1
State	Text of Provision	Citation	Ī
Henri	Takin passon has the right is a clear and healthst environment as defined by less relating to environmental quality, including control of politions and conservation, protection and enhancement of national resources. Any section any enforce their girls against any party, public or private, through appropriate legal proceedings, subject to reasonable limitations and requisition as provided by fair.	Haw Const. Art XI § 0	Ī
Illinois	**************************************	Article XI	Ī
Massachusetts	The people shall have the option bear in not water freedom from accession and unmeasure yreas, and the makes, secretarious modes and expendent of the people	Mass. Constitution. Amendment 97	1



#### Sara Zimmerman

Climate Equity Policy Center

510-333-4471 sara@climateequitycenter.org www.climateequitycenter.org



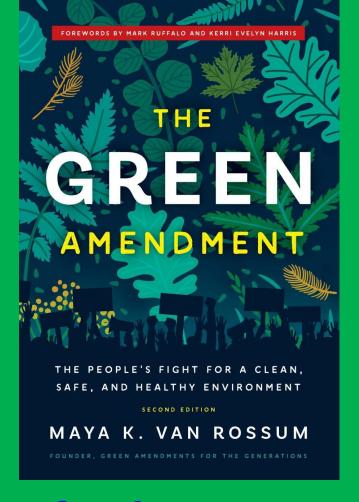
#### **Speaker**

Maya K. van Rossum



Founder and Leader
Green Amendments for the
Generations







#### www.forthegenerations.org

#### Maya K. van Rossum

- Founder National Green Amendments
   The Generations
- Author, <u>The Green Amendment</u>, <u>The People's Fight For a Clean, Safe & Healthy Environment</u>
- the Delaware Riverkeeper
- 30 Yr Leader of the Delaware Riverkeeper Network
- Environmental Advocate & Attorney

maya@ForTheGenerations.org 267-274-2674





#### **Green Amendments For The Generations:**

To inspire and support the passage and implementation of Green Amendments in every state constitution and at the federal level in order to protect and secure the rights of all people, including future generations,

- to clean water & air
- a stable climate &
- healthy environments



# Green Amendments Give Highest Constitutional Standing for Environmental Rights Every Green Amend = Environmental Rights Amend

**NOT** Every Environmental Rights Amend = Green Amend





### Not Just Any Language Will Do

To Secure Meaningful & Enforceable Constitutional Recognition & Protection



**Green Amendments Are Needed** 

# Green Amendments are Constitutional environment rights amendments that meet certain criteria

#### **Constitutional 'Green Amendment' Elements/Criteria**

- ✓ Bill of Rights / Declaration of Rights Placement
- ✓ ALL People
- Environmental essentials: water, air, natural resources, environments
  - if climate important then include it
- ✓ Environmental Justice Equitable protection for all
- Generational Protection
- ✓ Obligation to protect Natural Resources:
  - State as Trustee People the Beneficiaries
- ✓ Explicit statement prohibiting infringement of the right
- ✓ Self Executing
- ✓ Applies throughout government
- ✓ Limitation on government authority + Proactive obligation to protect
- ✓ Enforceable by the People
- ✔ Places environmental rights on par with other fundamental rights
- ✓ Subject to Strict Scrutiny review



#### **How Do They Work?**



#### Two Obligations:

#### **Procedural Obligation**

Consideration of environmental rights impacts

science, impacts, cumulative impacts

#### **Substantive Obligation**

to protect the right

to conserve, protect, maintain natural resources

#### Link to learn more:

https://forthegenerations.org/wp-content/uploads/Green-

<u>Amendments-for-Climate-Protection-An-Overview-2.pdf</u>

## Remedies Equitable relief



**VS** 

#### money damages

- » Law, regulation unconstitutional so unenforceable
- » Permits, licenses unconstitutional so cannot be used to support govt action
- » State failure to act, or choice of action, is resulting in infringement so must be reconsidered

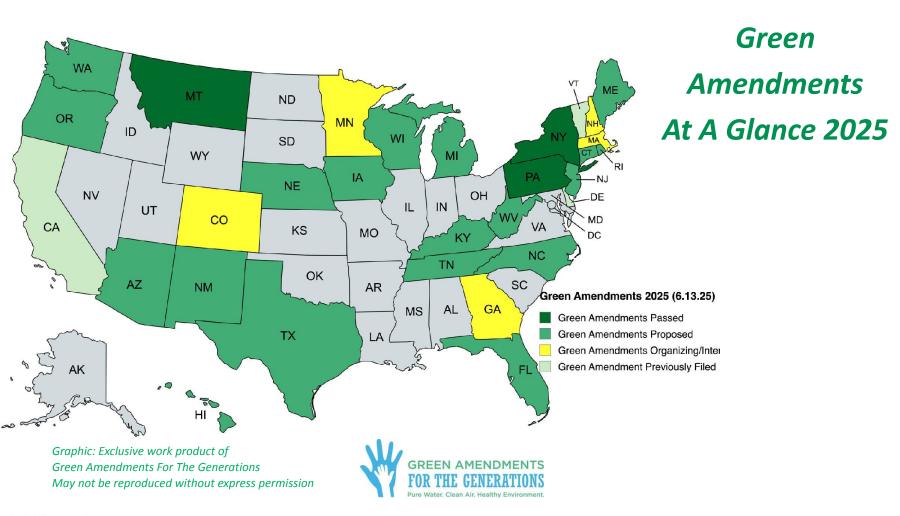
Transforms the Legal Landscape



### Nationwide Movement States Leading -- Federal 2nd







Does Constitutional Really Make a Difference? Yes, Many Examples Find case write ups at:



# Key Criteria ..... No Cookie Cutter

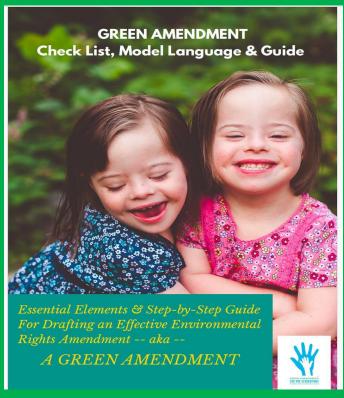






# Model Language Guide

https://bit.ly/GreenAmendStepByStepGuide



contact Maya for help in

contact Maya for h

### **PAs Green Amendment**

# Article 1, Section 27 of the Pennsylvania Constitution

"The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people."



Michigan, Adding Section 29 to Article 1:

Every person has an inherent and inalienable right to a clean and healthy environment, including clean water, air, and soils; balanced ecosystems; a stable climate; and the preservation of the natural, cultural, recreational, and healthful qualities of the environment. The state, including each branch, agency, and political subdivision, shall take no action that would infringe on these rights and shall protect these rights equitably for all people regardless of race, ethnicity, socioeconomics, or geography.

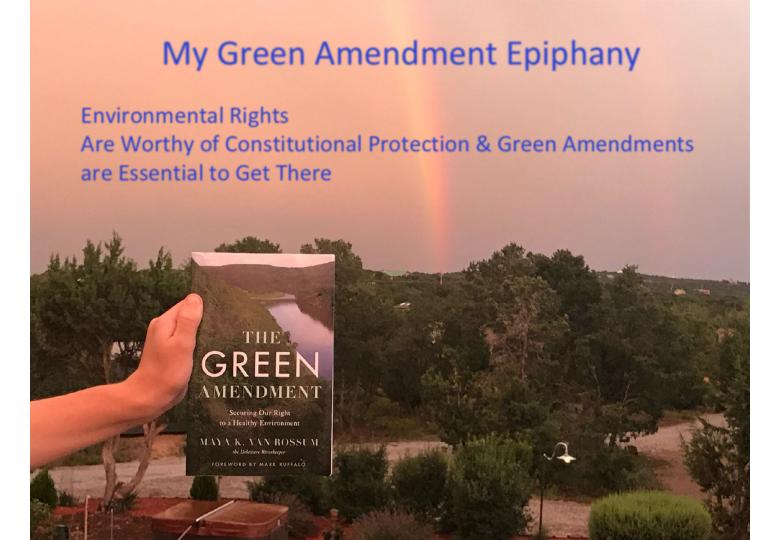
This State's natural resources, including, but not limited to, surface water, groundwater, wetlands, ecosystems, air, native flora and fauna, soils, and climate, are the common property of all the people, including both present and future generations. This state, including each branch, agency, and political subdivision, shall serve as trustee of these resources and conserve, protect, and maintain these resources for the benefit of all the people.

The inalienable rights and trustee responsibilities recognized in this section may be directly invoked and enforced by the people of this state.

Article I of the Constitution of the State of Hawaii is amended by adding a new section:

The inherent and inalienable right of the people, including present and future generations, to clean water and air, a healthful environment and climate, healthy native ecosystems, and beaches, shall be protected and shall not be infringed.

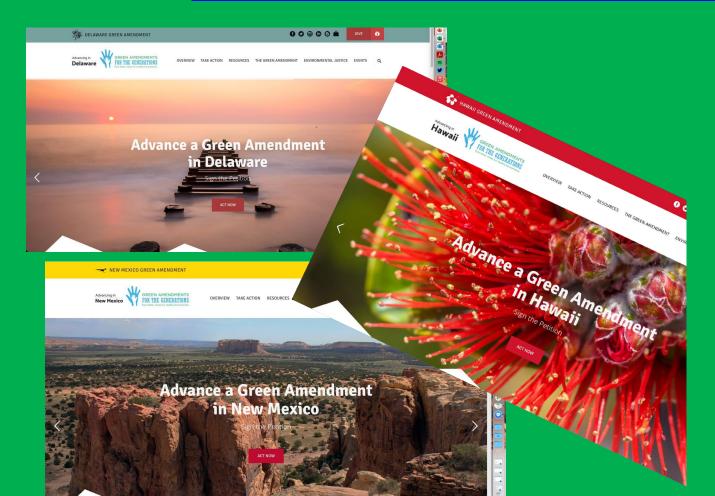
Note: Hawaii has trustee language elsewhere in constitution that this will compliment.



#### What Does It Mean to Have A Green Amendment?

- » Environmental rights on par with other rights
- » Limitation on government
- » New layer of protection statute, regulation, constitution
- » Prevention first
- » Equitable protection EJ & generational
- » If infringe: compelling & minimize
- » Better decisions
- » Strengthens existing law
- » Fills the gaps
- » People have power
- » Court as a backstop

#### www.StateAbbrev+GreenAmendment.org







www.GreenAmendment.org

### **Speaker**

Mat dos Santos



Co-Executive Director and General Counsel

Our Children's Trust







# **Science-Powered Solution**

We know the scientific prescription for a safe climate: return atmospheric carbon dioxide concentrations to below 350 parts per million by 2100.

We seek legally binding judicial declarations that end new fossil infrastructure and extraction, phase out fossil fuels no later than 2050, and restore the Earth's energy balance.

We trust science.

# Youth-Powered Litigation

Children are living through unprecedented wildfires, smoke, heat, storms, drought, and floods, and they know what needs to be done.

We seek enforceable remedies against governments that are harming children and generations to come— the politically silent majority. Constitutional impact litigation is the most important tool to secure durable climate justice.

We trust children.

#### Democracy-Powered Future

The world's courts hold the power to enforce the right to life for all children.

We envision a future where all three branches of government have recognized children's climate rights, and courts have declared that governments are legally constrained from violating their rights.

We trust

The climate crisis is the single biggest driver of health for every child born today."

Lisa Patel, MD, MESc Executive Director, Medical Society Consortium on Climate and Health Board Member, Our Children's Trust

# THE ISSUE

- Climate emergency and extreme climate events are increasing
- Government has perpetuated the climate crisis by actively investing in the fossil fuel system despite knowing it harms public health and wellbeing







Georgi

Claire

# Held v. Montana

First Ever Children's Constitutional Climate Trial June 12 – 20, 2023, Helena, MT



Ruby

Lilian

Kian





Eva

### **MT Fossil Fuel Energy System**



Coal



Oil and gas extraction



**Pipelines** 



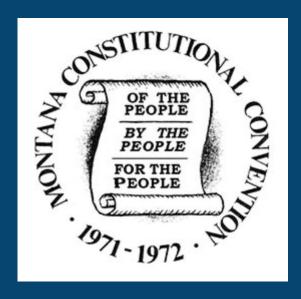
Coal and gas power plants

Montana State Energy Policy: 90-4-1001(c)-(g), MCA

Climate Change Exception to MEPA: 75-1-201(2)(a), MCA

Systemic permitting fossil fuel activities





# **Montana's Constitution**

- Right to a clean and healthful environment
  - Article II, Section 3 & Article IX, Section 1
- Right to individual dignity and equal protection of the laws
  - Article II, Section 4
- Right to safety, health, life, liberty, and property
  - Article II, Sections 3 & 17
- Those under 18 enjoy all the same fundamental rights
  - Article II, Section 15





MONTANA SUPREME COURT AFFIRMS DISTRICT COURT: DECEMBER 18, 2024

#### **HELD V. STATE OF MONTANA**

## Montana Supreme Court Opinion 2024 MT 312

Key Ruling #1: Right to a Clean and Healthful Environment Includes the Right to a Stable Climate System that Sustains Human Lives and Liberties

FILED 12/18/2024 Bowen Greenwood DLERK OF THE SUPPLEME COURT STATE OF MONTANA Cana Number: DA 23.0575

DA 23-0575

IN THE SUPREME COURT OF THE STATE OF MONTANA

2024 MT 312

RIKKI HELD; LANDER B., by and through his guardian Sara Busse; BADGE B., by and through his guardian Sara Busse; SARIEL SANDOVAL; KIAN T., by and through his guardian Todd Tanner: GEORGIANNA FISCHER KATHRYN GRACE GIBSON-SNYDER: EVA L., by and through her guardian Mark Lighthiser; MIKA K., by and through his guardian Rache Kantor: OLIVIA VESOVICH: JEFFREY K... by and through his guardian Laura King; NATHANIEL K., by and through his guardian Laura King; CLAIRE VLASES; RUBY D., by and through her guardian Shane Doyle: LILIAN D., by and through her guardian Shane Doyle: TALEAH HERNÁNDEZ,

Plaintiffs and Appellees,

STATE OF MONTANA, GOVERNOR GREG GIANFORTE, MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY, MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION, and MONTANA DEPARTMENT OF TRANSPORTATION.

Defendants and Appellants

APPEAL FROM:

District Court of the First Judicial District, In and For the County of Lewis and Clark, Cause No. CDV 2020-307 Honorable Kathy Seeley, Presiding Judge

COUNSEL OF RECORD:

For Appellants State Agencies and Governor:

Dale Schowengerdt (argued), Landmark Law PLLC, Helena, Montana

Lee M. McKenna, Montana Department of Environmental Quality, Helena, Montana

#### HELD v. STATE OF MONTANA, 2024 MT 312

# Right to a Stable Climate System

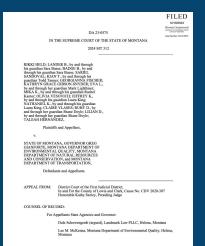
¶30 We reject the argument that the delegates—intending the strongest, all-encompassing environmental protections in the nation, both anticipatory and preventative, for present and future generations—would grant the State a free pass to pollute the Montana environment just because the rest of the world insisted on doing so.

The District Court's conclusion of law is affirmed: Montana's right to a clean and healthful environment and environmental life support system includes a stable climate system, which is clearly within the object and true principles of the Framers inclusion of the right to a clean and healthful environment.

¶31 Issue Two: Whether Plaintiffs have standing to challenge the constitutionality of the MEPA Limitation.

¶32 Parties are entitled to bring a direct action to enforce their inalienable right to a clean and healthful environment but must still meet minimum criteria to establish standing. 
MEIC 1999, ¶ 28, 45. Standing is a threshold question of justiciability, required by Article VII, Section 4(1), of the Montana constitution, that focuses on whether the claimant is a proper party to assert a claim. Larson, ¶ 45. A plaintiff has legal standing to assert a claim if (1) the claim is based on an alleged wrong or illegality that has caused, or is likely to cause, the plaintiff to suffer a past, present, or threatened injury to person, property, or exercise of civil or constitutional right and (2) the harm is of a type that legal relief can effectively alleviate, remedy, or prevent. Larson, ¶ 46 (citing Schoof v. Nesbit, 2014 MT 6, ¶ 20–21, 373 Mont. 226, 316 P.3d 831); Schoof, ¶ 15 (requiring a "personal stake" in the outcome of the controversy). Justiciability requires only one plaintiff to have standing

¶ 30: "We reject the argument that the delegates—intending the strongest, all-encompassing environmental protections in the nation, both anticipatory and preventative, for present and future generations—would grant the State a free pass to pollute the Montana environment just because the rest of the world insisted on doing so. The District Court's conclusion of law is affirmed: Montana's right to a clean and healthful environment and environmental life support system includes a stable climate system . . . "



#### **HELD V. STATE OF MONTANA**

## Montana Supreme Court Opinion 2024 MT 312

Key Ruling #2: Plaintiffs Have Standing to Challenge the Constitutionality of Laws that Infringe Upon Their Inalienable Right to a Clean and Healthful Environment

FILED 12/18/2024 Bowen Greenwood DLERK OF THE SUPPLEME COURT STATE OF MONTANA Cana Number: DA 23.0575

DA 23-0575

IN THE SUPREME COURT OF THE STATE OF MONTANA

2024 MT 312

RIKKI HELD; LANDER B., by and through his guardian Sara Busse; BADGE B., by and through his guardian Sara Busse; SARIEL SANDOVAL; KIAN T., by and through his guardian Todd Tanner: GEORGIANNA FISCHER KATHRYN GRACE GIBSON-SNYDER: EVA L., by and through her guardian Mark Lighthiser; MIKA K., by and through his guardian Rache Kantor: OLIVIA VESOVICH: JEFFREY K... by and through his guardian Laura King; NATHANIEL K., by and through his guardian Laura King; CLAIRE VLASES; RUBY D., by and through her guardian Shane Doyle: LILIAN D., by and through her guardian Shane Doyle: TALEAH HERNÁNDEZ,

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For Appellants State Agencies and Governor:

Dale Schowengerdt (argued), Landmark Law PLLC, Helena, Montana

Lee M. McKenna, Montana Department of Environmental Quality, Helena, Montana

#### HELD v. STATE OF MONTANA, 2024 MT 312

## Plaintiffs Have Standing

Generally, the District Court found that children are uniquely vulnerable to the impacts and consequences of climate change (including the impacts from heatwaves, droughts, air pollution, and other extreme weather events on young bodies) because their bodies and minds are still developing. More specifically, Plaintiffs discussed at trial: the fear they feel

37

from disappearing glaciers in Montana (both aesthetically and from the dependence many communities place on the water they provide throughout the summer); the impacts climate change is having on culturally important native wildlife, plants, snow, and practices; summer smoke and extreme heat preventing Plaintiffs from enjoying outdoor activities and sports which are important to them; the economic effects that less snowpack and more drought are having on ranches owned by Plaintiffs' families and the resulting emotional harm; the emotions they face when confronted with growing up in this quickly changing state and the prospect of raising the next generation in increasingly dangerous weather patterns; and many other harms to their recreational, work, and physical and emotional wellbeing. See also generally Brief of Amici Curiae Public Health Experts and Doctors, No. DA 23-0575 (Mont. March 21, 2024) (corroborating harms with peer-reviewed medical literature). These aesthetic, recreational, and economic injuries are also sufficient to satisfy the constitutional requirements for personalized injury, even though widely shared. See Park Cnty., ¶ 20.

¶ 55: "Plaintiffs discussed at trial . . . the impacts climate change is having on culturally important native wildlife, plants, snow, and practices; summer smoke and extreme heat preventing Plaintiffs from enjoying outdoor activities and sports which are important to them . . . The emotions they face when confronted with growing up in this guickly changing state and the prospect of raising the next generation in increasingly dangerous weather patterns . . .These aesthetic, recreational, and economic injuries are also sufficient to satisfy the constitutional requirements for personalized injury, even though widely shared."



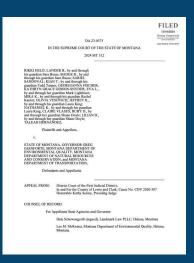
Of course, as shown in the above analysis—and in agreement with the Dissent—plaintiffs must still have standing to challenge a statute as facially unconstitutional. Plaintiffs here demonstrated standing not by alleging facts that the MEPA Limitation was unconstitutional because of how the State applied it to a particular permit but because they sufficiently alleged that the MEPA Limitation unconstitutionally infringes on their right to a clean and healthful environment. This is distinct from a common, abstract interest in the constitutionality of a law. Accord Schoof, § 20.

#### HELD v. STATE OF MONTANA, 2024 MT 312

# Court's Rejection of Common Arguments Against Standing in Climate Cases

¶ 56. To require an act to be the sole cause of an injury before it could be redressed, Dissent, ¶ 90, would upend decades of jurisprudence from this Court and the United States Supreme Court that hold an injury caused in part by a challenged action is redressable even if it does not redress the injury in full. See, e.g., Opinion, ¶¶ 45, 52 (citing to federal caselaw). Declaring the MEPA Limitation unconstitutional will redress the constitutional injury caused by that statute, regardless of whether or not other statutes also cause constitutional harms. To hold otherwise would close the doors of the courts to plaintiffs trying to vindicate personal constitutional rights unless they could identify every other instance where their rights might be infringed and sought to litigate those at the same time. The State repeatedly tries to redirect our focus to global climate change and the staggering magnitude of the issue confronting the world in addressing it. The State argues that it should not have to address its affirmative duty to a clean and healthful environment because even if Montana addresses its contribution to climate change, it will still be a problem if the rest of the world has not reduced its emissions. This is akin to the old ad populum fallacy: "If everyone else jumped off a bridge, would you do it too?"

¶ 48: "The state argues that it should not have to address its affirmative duty to a clean and healthful environment because even if Montana addresses its contribution to climate change, it will still be a problem if the rest of the world has not reduced its emissions. This is akin to the old ad populum fallacy: 'If everyone else jumped off a bridge, would you do it too?'"



#### **HELD V. STATE OF MONTANA**

# Montana Supreme Court Opinion 2024 MT 312

Key Ruling #3: MEPA Limitation is **Unconstitutional** 

FILED 12/18/2024 Bowen Greenwood DLERK OF THE SUPREME COURT STATE OF MONTANA Cana Number: DA 23.0575

DA 23-0575

IN THE SUPREME COURT OF THE STATE OF MONTANA

2024 MT 312

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COUNSEL OF RECORD:

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Lee M. McKenna, Montana Department of Environmental Quality, Helena, Montana

#### HELD v. STATE OF MONTANA, 2024 MT 312

# Montana Must Consider GHGs & Climate in MEPA

Reviews

MCA.

to avert potential environmental harms through informed decision making." Park Cntv.,

¶ 75-76. Foreclosing environmental review of GHG emissions under MEPA prevents state agencies from using any information garnered during this process to inform and strengthen substantive permitting or regulatory decisions or any mutual mitigation measures or alternatives that might be considered when the environmental harms of the proposed project are fully understood. The MEPA Limitation arbitrarily excludes all activities from review of cumulative or secondary impacts from GHG emissions without regard to the nature or volume of the emissions absent a requirement by federal law. Accord MEIC 1999, ¶ 80. The MEPA Limitation thus violates those environmental rights guaranteed by Article II, Section 3, and Article IX, Section 1, of the Montana Constitution. The District Court is affirmed: section 75-1-201(2)(a), MCA, is unconstitutional and the State is permanently enjoined from acting in accordance with it. We decide only that the Constitution does not permit the Legislature to prohibit environmental reviews from evaluating GHG emissions. Other issues will be discussed in the context of specific

permitting cases. 11 Our decision is limited to the constitutionality of § 75-1-201(2)(a),

¶ 68: "Foreclosing environmental review of GHG emissions under MEPA prevents state agencies from using any information garnered during this process to inform and strengthen substantive permitting or regulatory decisions or any mutual mitigation measures or alternatives that might be considered when the environmental harms of the project are fully understood. . . . The Constitution does not permit the Legislature to prohibit environmental reviews from evaluating GHG emissions."







# NAVAHINE V. HAWAI 'I DEP'T OF

TRANCRARTETIAN

• 13 youth (9-18 years old) from across the islands

 Sought zero-emissions transportation sector by 2045



### HAWAI 'I CONSTITUTION ARTICLE XI

"For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawai'i's natural beauty and all natural resources[.]" §1

"Each person has the right to a clean and healthful environment, as defined by the laws relating to environmental quality[.]" §9



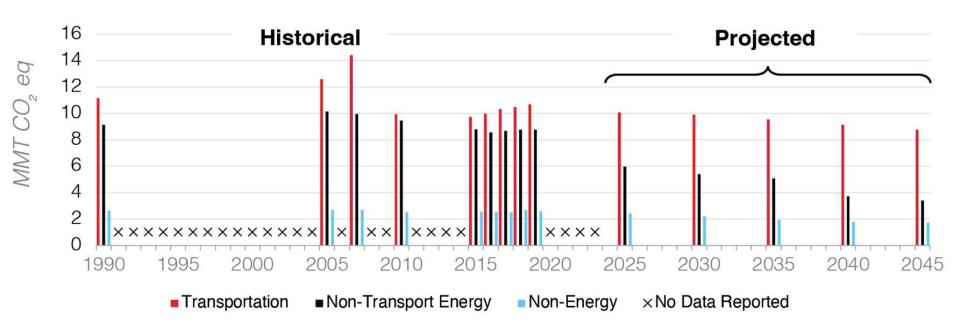
### ZERO EMISSIONS TRANSPORTATION

"In order to achieve the goal of a fully decarbonized economy, the State needs to plan ahead and understand the steps that need to be taken to create a carbon-negative economy by 2045[.]"

It shall be the goal of the State to reduce GHG emissions and achieve zero emissions across all transportation modes within the state.

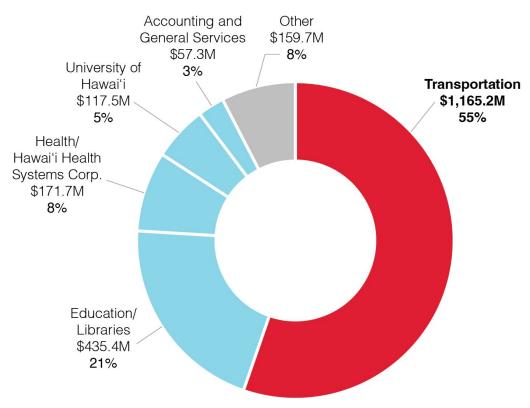


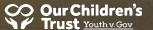
# **Hawai 'I GHG Emissions and Projections**



DS Figure 1. Total emitted (1990-2019) and projected (2020-2045) greenhouse gases for Hawai'i broken down by transportation (red), non-transportation energy (black), and non-energy (blue) as determined by the state of Hawai'i. (HDOH, 2023a).

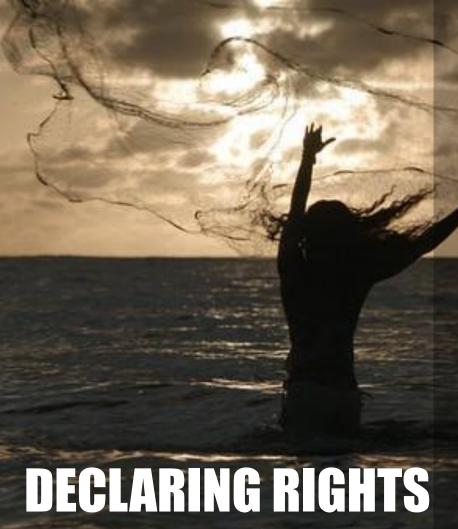
### **Hawai'i FY 2024 Budget**











# AN UNPRECEDENTED TRANSFORMATIONAL SETTLEMENT

Affirmed that:

- the right to a clean and healthful environment subsumes a right to a life-sustaining climate system
- the right to land, water, and air are protected from climate change for present and future generations



# AN UNPRECEDENTED TRANSFORMATIONAL SETTLEMENT

Agreed to take all actions necessary to achieve **Zero Emissions** no later than 2045 for all transportation:

- Establish a Greenhouse Gas Reduction Plan within 1 year
- Establish interim GHG reduction targets for 2030, 2035, and 2040
- Specify benchmarks and performance metrics
- Create positions to oversee implementation
- Reform HDOT budget and programming
- Implement public education, outreach, community engagement, and partnerships

## YOUTH ADVISORY COUNCIL

Providing youth with a seat at the table, **requiring** HDOT to keep *Navahine* plaintiffs informed, providing them with opportunities to provide feedback and input into shaping policies, and establishing a volunteer youth council to advise on HDOT's commitments in the years to come.



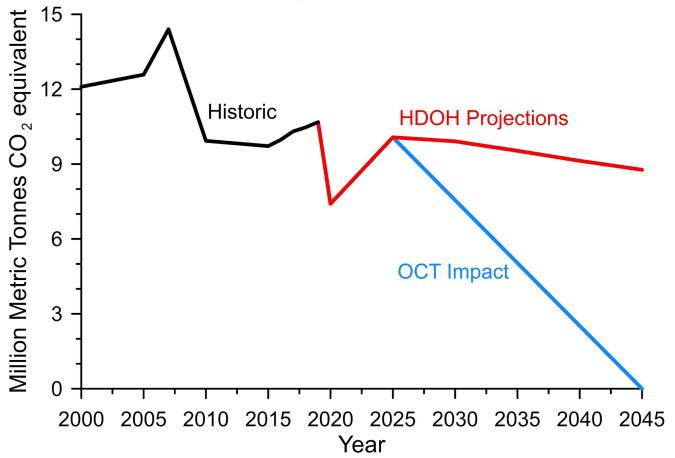
## COURT SUPERVISION UNTIL 2045

One of the most important aspects of the agreement is that the court has agreed to accept continuing jurisdiction. If there are challenges along the road, the Court will be able to step in and ensure the agreement is enforced, until zero emissions targets are achieved through 2045.



#### NAVAHINE'S IMPACT







#### Where do we go from here?

#### Settlement Implementation in Hawai'i

- Greenhouse Gas Reduction Plan
- Education
- · Monitoring Compliance

#### Application to Other States

- What we know
- Hawai'i as a model moving forward





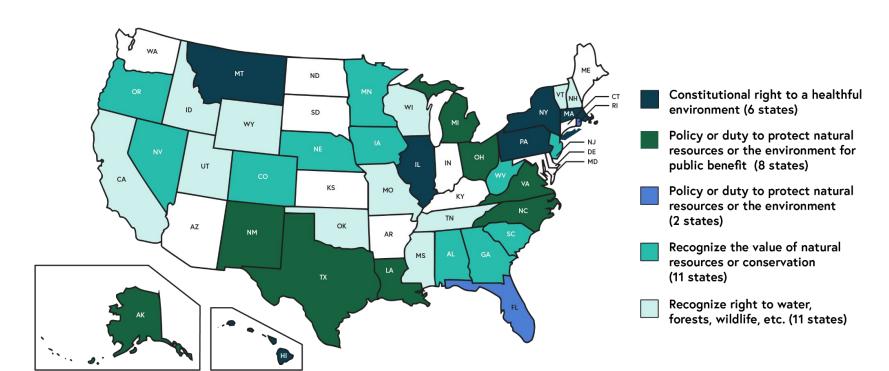
We will leverage proven legal strategy to secure legal victories around the world.

Federal courts recognize enforceable constitutional right to safe climate.

26 states recognize enforceable constitutional right to safe climate.

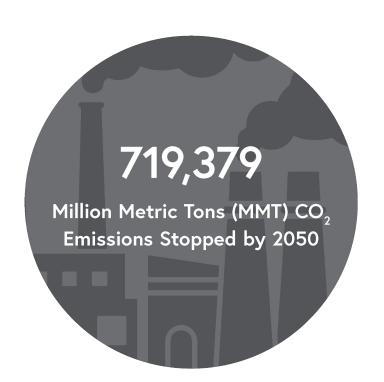
3 international tribunals recognize fundamental right to safe climate defined by best science.

## **CONSTITUTIONAL PROTECTIONS**



## IMPACT OF STATE CASE STRATEGY







## Thank you.

Mat dos Santos mat@ourchildrenstrust.org

### **Join Our Mailing List!**



## Q&A



#### Thank you for joining!

# Reach out to kristen@climate-xchange.org with any additional questions!

