

## WE NEED YOUTH: CLIMATE CHANGE, PSYCHOLOGICAL HARM, AND LEGAL STANDING IN *HELD V. MONTANA*

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### INTRODUCTION

Human-induced climate change is on track to irreversibly devastate ecological systems throughout this century.<sup>1</sup> This crisis is driven by increases in greenhouse gas emissions since the Industrial Revolution, and as a result, the global climate is buckling under the stress of overconsumption and unsustainable land use.<sup>2</sup> These pressures have led to rapid changes in ocean temperatures, decreased food security, more frequent extreme weather events, and heightened ecosystem vulnerability.<sup>3</sup> These effects are significantly more life-threatening to vulnerable populations like Indigenous peoples, low-income households, and children.<sup>4</sup> To address this escalating crisis, nations must prioritize robust solutions, chief among them being significant and sustained reductions in greenhouse gas emissions.<sup>5</sup>

As the climate crisis tightens its grip, young people increasingly feel forgotten and ignored.<sup>6</sup> Fifty-eight years have passed since the President's Science Advisory Committee first alerted the U.S. government to the scientific warnings about climate change.<sup>7</sup> Yet, for almost six decades, all

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<sup>1</sup> Hoesung Lee et al., *Climate Change 2023: Synthesis Report*, INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE [IPCC], at 18 (2023), [https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC\\_AR6\\_SYR\\_FullVolume.pdf](https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_FullVolume.pdf). [<https://perma.cc/3JAZ-YDA2>].

<sup>2</sup> *Id.* at 4, ¶ A.1.

<sup>3</sup> *Id.* at 5, 6.

<sup>4</sup> *Id.* at 50.

<sup>5</sup> *See Id.* at 12, ¶ B.1

<sup>6</sup> Roger Harrabin, *Climate change: Young people very worried- survey*, BBC (Sept. 14, 2021), <https://www.bbc.com/news/world-58549373>. [<https://perma.cc/2ZCL-KX4C>].

<sup>7</sup> Env't Pollution Panel of the President's Sci. Advisory Comm., *Restoring the Quality of Our Env't*, (Nov. 5, 1965)

[https://nsarchive.gwu.edu/sites/default/files/documents/Document%20\\_0.pdf](https://nsarchive.gwu.edu/sites/default/files/documents/Document%20_0.pdf). [<https://perma.cc/GJ3A-9RYV>]. (reporting on warnings of pollution impacts, linking the measurable effects of fossil fuel production to the increase in carbon dioxide in the atmosphere and to the measurable changes in the Earth's climate by the year 2000).

three branches of government have consistently failed to recognize the urgency of climate change.<sup>8</sup> In response, state governments and legal organizations are taking it up with the courts.<sup>9</sup>

The summer of 2023 marked an inflection point for many adults and a breaking point for concerned young Americans.<sup>10</sup> Near-apocalyptic conditions persisted throughout the summer. Daily temperatures rose to a level that prompted hospital visits for heat-related illnesses and serious injuries from scorching sidewalks.<sup>11</sup> Against this backdrop, the question of young people's ability to influence climate policy comes into sharp focus. Without the right to vote, young people's capacity to impact climate policy is severely limited.

The lack of representation for young people's interests is deteriorating the mental wellness of American youth and is exacerbated by government support for a fossil fuel energy system.<sup>12</sup> The results of a large-scale survey of climate anxiety in young people and its relationship to perceived government response reflect this concern.<sup>13</sup> More than a third of respondents expressed that their feelings about climate change negatively impacted their *daily* lives.<sup>14</sup> About 76% described the future as "frightening."<sup>15</sup> A similar study from 2021 found that the reported daily distress and feelings of betrayal strongly correlate with a wholly inadequate governmental response.<sup>16</sup> The refusal of governments to meaningfully

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<sup>8</sup> See Zoya Teirstein, *Scientists identify the missing ingredient for climate action: Political will*, GRIST (April 8, 2022), <https://grist.org/politics/scientists-identify-the-missing-ingredient-for-climate-action-political-will/>. [https://perma.cc/MRF2-9PBR] (emphasizing that the political branches' hesitation and refusal in employing significant climate action will detrimentally impact the economy and social stability).

<sup>9</sup> Elena DeBre, *Youth suing states over climate change will have their day in court, and public opinion is on their side*, YALE PROGRAM ON CLIMATE CHANGE COMMUN. BLOG (Apr. 20, 2022), <https://climatecommunication.yale.edu/news-events/youth-climate-lawsuits-in-montana-oregon-and-virginia-demonstrate-ypccc-findings/>. [https://perma.cc/NW5J-BULA].

<sup>10</sup> Julie Bosman, *Why Summers May Never Be the Same*, N.Y. TIMES (Oct. 5, 2023), <https://www.nytimes.com/2023/10/05/us/summer-climate-change.html>.

<sup>11</sup> Jen Christensen, *It's so hot in Arizona, doctors are treating a spike of patients who were burned by falling on the ground*, CNN (July 24, 2023), <https://www.cnn.com/2023/07/24/health/arizona-heat-burns-er/index.html>. [https://perma.cc/Q45K-8GFV].

<sup>12</sup> Caroline Hickman et al., *Climate anxiety in children and young people and their beliefs about government responses to climate change: a global survey*, 8 THE LANCET PLANETARY HEALTH e879, e885 (2024).

<sup>13</sup> *Id.*

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

<sup>15</sup> *Id.*

<sup>16</sup> Caroline Hickman et al., *Climate anxiety in children and young people and their beliefs about government responses to climate change: a global survey*, 5 THE LANCET PLANETARY

answer to climate change not only jeopardizes young people’s security but is creating a mental health crisis.<sup>17</sup>

August of 2023 brought success for American youth suing a state for the right to live in a safe climate with the landmark case *Held v. State of Montana*.<sup>18</sup> The youth in this case were represented by Our Children’s Trust (OCT), a non-profit law firm representing youth in rights-based climate litigation, makes it their mission to bring lawsuits challenging government laws and conduct promoting fossil fuels.<sup>19</sup> In *Held*, OCT sued the state of Montana over an amendment to the Montana Environmental Policy Act (MEPA).<sup>20</sup> The state legislature barred identification and consideration of all climate change-related issues in environmental impact assessments.<sup>21</sup> Pursuant to the MEPA limitation, the approval of numerous large fossil fuel-related permits could advance without considering or disclosing greenhouse gas emissions or climate change impacts.<sup>22</sup> In *Held*, the youth plaintiffs described experiencing debilitating mental, physical, spiritual, cultural, and psychological injuries caused by climate change.<sup>23</sup> They detailed psychological injuries due to the government’s betrayal of their interests in supporting fossil fuels.<sup>24</sup> OCT argued that these injuries directly result from the Montana legislature’s efforts to limit considering climate change in environmental impact reviews and the ensuing fossil fuel permitting decisions.<sup>25</sup> The First Judicial District Court of Montana found a “fairly traceable” causal connection between the legislature’s actions and the plaintiff’s injuries, but it refused to grant standing for the plaintiff’s psychological injuries related to institutional betrayal as cognizable on their own.<sup>26</sup>

This paper argues that the Montana district court should have recognized the youth plaintiff’s mental health injuries as cognizable on their own in relation to the state’s inaction and counterproductive measures regarding climate change. Part I provides background on legal standing for psychological harm and explores the concept of climate emotions. Part II

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HEALTH e863, e865 (2021).

<sup>17</sup> *Id.* at e871.

<sup>18</sup> Findings of Fact, Conclusions of Law, and Order at 1, *Held v. State of Mont.* (Mont. 1st Dist. Ct. filed Aug. 14, 2023) (No. CDV-2020-307).

<sup>19</sup> Our Children’s Trust, *Our Children’s Trust*, <https://www.ourchildrenstrust.org>. [https://perma.cc/8CUH-EHED].

<sup>20</sup> *Held*, *supra* note 18 at 32.

<sup>21</sup> *Id.* at 100.

<sup>22</sup> *Id.* at 15.

<sup>23</sup> *Id.* at 32.

<sup>24</sup> *Id.* at 54-57.

<sup>25</sup> *Id.* at 2.

<sup>26</sup> *Held*, *supra* note 18 at 86, 87.

analyzes and employs relevant Montana case law, advocating for a modernized approach to standing that recognizes the unique vulnerabilities of youth. Part III draws on other OCT rights-based climate cases to compare *Held* to standing precedent in other states. Throughout, this paper emphasizes the importance of recognizing psychological standing to advance intergenerational climate justice. Ultimately, this paper envisions a system where state courts recognize mental health injuries for youth plaintiffs as causally linked to state action and inaction on climate change and treats them as cognizable on their own for standing.

## PART I: LEGAL AND FACTUAL BACKGROUND

### A. *Legal Background: Standing Under Federal and State Law*

#### 1. Federal Standing Basics

Article III of the Constitution states that federal courts have jurisdiction over “cases” and “controversies” arising under federal law.<sup>27</sup> The Supreme Court interpreted Article III to limit its power to review cases where an individual shows they have sustained or is immediately in danger of sustaining some direct injury.<sup>28</sup> This concept became known as the legal standing requirement. Later, the Court added three new requirements, formulating the modern Article III standing test of “injury in fact.”<sup>29</sup> First, plaintiffs must have suffered injuries that are “concrete,” “particularized,” “actual,” and “imminent.”<sup>30</sup> This means plaintiffs can only bring claims related to an immediate injury that cannot be “hypothetical” or “conjectural.”<sup>31</sup> Assessing concreteness depends on “whether the asserted . . . harm has a ‘close relationship’ to harm traditionally recognized in American courts.”<sup>32</sup> Second, there must also exist a “fairly traceable” causal connection between the injury and the defendant’s conduct.<sup>33</sup> No causal connection exists if the conduct results from an independent third party not before the court, nor can courts grant standing for weak or speculative chains of causation.<sup>34</sup> Third, it must be likely that a favorable decision will redress the injury.<sup>35</sup> Redressability can take the form of injunctive, declaratory, or

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<sup>27</sup> U.S. CONST. art. III, § 2, cl. 1.

<sup>28</sup> *Commw. of Mass. v. Mellon*, 262 U.S. 447, 488 (1923) (Thompson, J., concurring).

<sup>29</sup> *Lujan v. Def. of Wildlife*, 504 U.S. 555, 560 (1992).

<sup>30</sup> *Id.* at 560-61.

<sup>31</sup> *City of L.A. v. Lyons*, 461 U.S. 95, 102 (1983).

<sup>32</sup> *TransUnion LLC v. Ramirez*, 594 U.S. 413, 417 (2021) (citing *Spokeo, Inc. v. Robins*, 578 U.S. 330, 340–41 (2016)).

<sup>33</sup> *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 41–2 (1976).

<sup>34</sup> *Id.* at 62 (Brennan, J., concurring).

<sup>35</sup> *Simon*, *supra* note 33, at 38.

nominal relief.<sup>36</sup>

Injunctive relief “is a remedy which restrains a party from doing certain acts or requires a party to act in a certain way” and will generally be granted if irreparable harm will result without the relief.<sup>37</sup> The Supreme Court has held that a plaintiff seeking injunctive relief must prove that future injury is “*certainly* impending.”<sup>38</sup> Alternatively, declaratory relief or judgment gives the court “immediate means to resolve the uncertainty” of the party’s rights.<sup>39</sup> What type of remedy offered is at the discretion of the deciding court. The court will grant standing if the plaintiff can show each of the three elements—injury in fact, causation, and redressability.<sup>40</sup>

## 2. Standing in Montana

The Montana district court applied the federal injury in fact standing test in *Held*, with some interesting distinctions.<sup>41</sup> Montana’s case law details additional state-specific standing requirements.<sup>42</sup> In *Sanders*, the Montana Supreme Court decided that “alleged injuries must be distinguishable from the public generally, but need not be exclusive” to the plaintiff.<sup>43</sup> The court expanded the sufficiency of complained injuries in *Heffernan*, holding environmental harms like light pollution and impacted wildlife habitat established a specific personal and legal interest.<sup>44</sup> In *Chipman*, the Montana Supreme Court rejected an employer’s argument that denying employees retirement benefits “hinge[d] on hypothetical contingencies and unknown future events” and thus lacked standing.<sup>45</sup> The court granted standing in *Chipman*, holding that threatened injury can constitute a cognizable interest.<sup>46</sup> In another case, the court recognized that the realistic fear of criminal prosecution and related psychological harms was sufficient for

<sup>36</sup> Simon, *supra* note at 33, at 38 v. E. Ky. Welfare Rts. Org., 426 U.S. 26, 38 (1976); Uzuegbunam v. Preczewski, 592 U.S. 279, 282-83 (2021) (holding that nominal damages can satisfy the redressability requirement for Article III standing)

<sup>37</sup> *Injunctive Relief*, LEGAL INFO. INST., CORNELL L. SCH., [https://www.law.cornell.edu/wex/injunctive\\_relief](https://www.law.cornell.edu/wex/injunctive_relief) [<https://perma.cc/W4WP-8QG6>].

<sup>38</sup> Clapper v. Amnesty Int’l U.S., 568 U.S. 398, 410–11 (2013).

<sup>39</sup> *Declaratory Judgment*, LEGAL INFO. INST., CORNELL L. SCH., [https://www.law.cornell.edu/wex/declaratory\\_judgment](https://www.law.cornell.edu/wex/declaratory_judgment) [<https://perma.cc/P5P4-7XHC>].

<sup>40</sup> *Standing Requirement: Overview*, LEGAL INFO. INST., CORNELL LAW SCH., <https://www.law.cornell.edu/constitution-conan/article-3/section-2/clause-1/standing-requirement-overiw> [<https://perma.cc/K2G6-5HXS>].

<sup>41</sup> *Held*, *supra* note 18, at 86–90.

<sup>42</sup> *Sanders v. Yellowstone Cnty.*, 2011 MT 91, 267 Mont. 116, 119-20 (1996); *Heffernan v. Missoula City Couns.*, 2011 MT 91, 360 Mont. 207, 225 (2011).

<sup>43</sup> *Sanders*, 267 Mont. 116 at 119-20.

<sup>44</sup> *Heffernan*, 360 Mont. at 225.

<sup>45</sup> *Chipman v. Northwest Healthcare Corp.*, 2012 MT 242, 366 Mont. 450, 458, 461–62 (2012).

<sup>46</sup> *Id.* at 461 (citing *Gryczan v. State*, 283 Mont. 433, 446 (1997)).

injury in fact claims.<sup>47</sup> While the Supreme Court has not recognized such claims, they are cognizable under Montana law.

The Montana Supreme Court has also distinguished the causation element of standing through various cases.<sup>48</sup> In *Larson*, the court held that a general interest in the legality of a governmental action is insufficient for standing without a “direct causal connection between the illegality and the harm personally suffered.”<sup>49</sup> Montana does not have a foreseeability requirement for causation except where the chain of causation is severed by an independent intervening cause, leaving the test with a simple “but for” or “substantial factor” analysis.<sup>50</sup> *Young* outlines the traditional “but-for” and “substantial factor” causation in fact tests.<sup>51</sup> But-for causation analyses depend on whether the injury would have occurred if not for the defendant’s alleged conduct.<sup>52</sup> Substantial factor causation applies in cases involving evidence and an assertion that multiple causes combined to produce the result at issue.<sup>53</sup> These cases allow Montana courts to analyze causation for standing purposes more broadly than required in federal courts.

Redressability, as a requirement for standing, was confirmed in *In re Vainio* when the court ruled that an injury must be one that can be remedied by a favorable outcome in the legal action.<sup>54</sup> Injury in fact standing in Montana thus reflects the basic federal principles while broadening and restricting certain elements.

Montana’s legislative branch can also enact statutes creating legal rights, where “the invasion of which creates standing, even though no injury would exist without [it].”<sup>55</sup> The legislative branch may grant standing to the “fullest extent of Article III” by expressly modifying prudential rules.<sup>56</sup> The Montana Supreme Court confirmed in *Heffernan* that discretionary limits on exercising judicial power cannot be defined by “hard and fast rules.”<sup>57</sup> The court in *Heffernan* granted standing to a plaintiff with a legal property right, which also applies to legislatively granted civil rights.<sup>58</sup> Through the creation of state-specific civil rights, the court can effectively create standing where federal interpretations are silent.

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<sup>47</sup> *Id.*

<sup>48</sup> *Larson v. State*, 2019 MT 28, 394 Mont. 167, 199–200 (2019); *Young v. Flathead Cnty.*, 232 Mont. 274, 281–82 (1998).

<sup>49</sup> *Id.*

<sup>50</sup> *Busta v. Columbus Hosp. Corp.*, 276 Mont. 342, 370 (1996).

<sup>51</sup> *Young v. Flathead Cnty.*, 232 Mont. at 281–82.

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *In re Vainio*, 284 Mont. 229, 235 (1997).

<sup>55</sup> *Linda R.S. v. Richard D.*, 410 U.S. 614, 617 (1973).

<sup>56</sup> *Heffernan*, 360 Mont. at 221.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

### 3. Psychological Harm and Standing

Psychological harm is the “impairment of a [person’s] mental health, as documented by a licensed psychologist, psychotherapist, or psychiatrist.”<sup>59</sup> The Supreme Court has not directly analyzed the “cognizability of psychological harm as injury in fact, choosing to focus only on the typical tangible harms such as physical and monetary.”<sup>60</sup> Plaintiffs must have a “personal stake” in the controversy’s outcome,<sup>61</sup> and they cannot simply claim a generalized grievance.<sup>62</sup> Further, the psychological impacts of observing conduct one disagrees with have been deemed insufficient for injury in fact analyses.<sup>63</sup> However, the Court has recently held that intangible injuries can be concrete.<sup>64</sup> According to the Court, “[a] ‘concrete injury’ must be ‘de facto;’ that is, it must actually exist.”<sup>65</sup> Although “concrete” is not synonymous with “tangible,” the Court agrees that intangible injuries like reputational harm can also be concrete, given sufficient causation and redressability.<sup>66</sup> The Court wrangles in this breadth by clarifying that plaintiffs cannot allege a bare procedural violation without the concrete personal harm component.<sup>67</sup> Additionally, a plaintiff’s threatened harm must be “certainly impending” and “perceptible,” further embracing the solidity of concreteness.<sup>68</sup> Nonetheless, no Supreme Court precedent explicitly addresses whether psychological harm alone meets the standard of “concrete” for the injury in fact test. Montana, however, fills this gap with the *Gryczan* decision.<sup>69</sup>

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<sup>59</sup> *Psychological Harm Definition*, L. INSIDER, <https://www.lawinsider.com/dictionary/psychological-harm>. [https://perma.cc/4JTB-PCM4].

<sup>60</sup> Rachel Bayefsky, *Psychological Harm and Constitutional Standing*, 81 BROOK. L. REV. 1555, 1557 (2016); Ramirez, *supra* note 31, at 414.

<sup>61</sup> *Baker v. Carr*, 369 U.S. 186, 204 (1962).

<sup>62</sup> *Hein v. Freedom From Religion Found., Inc.*, 551 U.S. 587, 620 (2007) (Scalia, J., concurring).

<sup>63</sup> *Valley Forge Christian Coll. v. Am. United for Separation of Church and State, Inc.*, 454 U.S. 464, 485 (1982).

<sup>64</sup> *Spokeo, Inc. v. Robins*, 578 U.S. 330, 340 (2016).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 341.

<sup>68</sup> *See* *U.S. v. SCRAP*, 412 U.S. 669, 689 (1973) (holding that the plaintiff’s recreational and aesthetic harm could constitute a concrete injury for standing purposes, but not if the allegations end up as a “sham” or fail to raise a genuine issue of fact).

<sup>69</sup> *Gryczan v. State*, 283 Mont. 433, 446 (1997).

## B. Factual Background: Climate Emotions

### 1. Anxiety

Climate and eco-anxiety are now popular terms to describe the worry individuals feel as climate instability gains attention worldwide.<sup>70</sup> The Handbook of Climate Psychology defines climate anxiety as the “heightened emotional, mental, or somatic distress in response to dangerous changes in the climate system.”<sup>71</sup> Comprehending the immensity and scale of the problem can be debilitating.<sup>72</sup> The implication of climate breakdown and “psychological threat of civilizational collapse is already imperiling millions.”<sup>73</sup> This existential undoing is already apparent, especially in countries like Tuvalu, Micronesia, and the Marshall Islands.<sup>74</sup> 3.6 billion people live in areas highly susceptible to climate change, and this number is expected to grow significantly between now and the end of the century.<sup>75</sup>

Anxiety about the state of the world can manifest as intrusive thoughts or feelings of distress about current or impending climatic disasters.<sup>76</sup> The underlying fear or uncertainty drives symptoms like irritability, panic attacks, sleeplessness, and depression.<sup>77</sup> These symptoms can lead to clinical

<sup>70</sup> Caroline Hickman et al. *supra* note 15, at E863.

<sup>71</sup> *Handbook of Climate Psychology*, CLIMATE PSYCH. ALL. (2020), <https://www.climatepsychologyalliance.org/images/files/handbookofclimatepsychology.pdf>. [<https://perma.cc/4A73-6EMK>].

<sup>72</sup> CHARLIE HERTZOG YOUNG, SPINNING OUT: CLIMATE CHANGE, MENTAL HEALTH, AND FIGHTING FOR A BETTER FUTURE 11 (FOOTNOTE PRESS 2023).

<sup>73</sup> *Id.* at 25.

<sup>74</sup> Lewis Jackson, *Climate change put Tuvalu in the spotlight*, REUTERS (Nov. 10, 2023), <https://www.reuters.com/business/environment/climate-change-put-tuvalu-spotlight-2023-11-10/> (Tuvalu, a Pacific Island state, is incredibly low-lying. During high tides, seawater covers about 40% of the land in Tuvalu, and by 2050, half of the land area of the capital will flood with seawater daily); Mark Edward Keim, *Sea Level Rise Disaster in Micronesia: Sentinel Event for Climate Change?*, 4 DISASTER MED. AND PUB. HEALTH PREPAREDNESS 81, 81–87 (Mar. 2010) (Another group of small islands, Micronesia, is experiencing the same acute sea-level rise, heavily impacting the nation’s crop productivity and freshwater resources. Sustainable interventions are rapidly necessary to ensure the survival of the nation); Jake Bittle, *Inside the Marshall Islands’ life-or-death plan to survive climate change*, GRIST (Dec. 5, 2023), <https://grist.org/extreme-weather/marshall-islands-national-adaptation-plan-sea-level-rise-cop28/> [<https://perma.cc/P3PG-GY99>] (The Marshall Islands, another group of Pacific Islands, face the same rapid sea-level rise that is increasingly endangering community subsistence and reliance on their land).

<sup>75</sup> *Climate change*, WORLD HEALTH ORG. (Oct. 12, 2023), <https://www.who.int/news-room/fact-sheets/detail/climate-change-and-health> [<https://perma.cc/VQ6H-97N2>].

<sup>76</sup> *Yale Experts Explain Climate Anxiety*, YALE SUSTAINABILITY (Mar. 13, 2023), <https://sustainability.yale.edu/explainers/yale-experts-explain-climate-anxiety>. [<https://perma.cc/8XVM-3JRV>].

<sup>77</sup> Joseph Dodds, *The psychology of climate anxiety*, 45 BJPSYCH BULL. 222, 222 (2021).



disorders, substance misuse, intimate partner violence, and even suicide.<sup>78</sup> When faced with these possibilities, defense mechanisms take over.<sup>79</sup> Defense mechanisms can manifest as minimizing the threat, intellectualizing the issues as to distance from emotion, becoming pessimistic and hopeless, and seeking distraction.<sup>80</sup>

“Although more than three-quarters of Americans experience worries about climate change effects, climate-related concerns are especially acute for young people.”<sup>81</sup> Children and adolescents are still developing their psychological capacity to process large-scale ramifications, and they lack influence over the systems responding to the climate crisis.<sup>82</sup> The unique situation of growing up in this environment leaves young people vulnerable to the mental and emotional effects of climate change.<sup>83</sup> Youth, specifically in the 2020s, become susceptible to climate anxiety through consistent exposure to “whiplash weather,” deadly climatic events, and the persistent disquiet of compounding global crises.<sup>84</sup> Many young people understand that they will live to see the worst environmental destruction this century—and it’s upending their sanity.<sup>85</sup>

## 2. Grief and Betrayal

Much like climate anxiety, grief and anticipatory grief can have devastating implications for sufferers.<sup>86</sup> People experience climate grief when they notice or anticipate the loss of “species, ecosystems, and meaningful landscapes due to acute or chronic environmental change.”<sup>87</sup> Like normal grief, the loss of a person or animal can trigger climate grief; however unlike normal grief, climate change is relentless and ongoing.<sup>88</sup> There is rarely a moment to fully grieve the loss of climate stability when a

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<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 224.

<sup>80</sup> *Id.*

<sup>81</sup> Janis Whitlock, *Climate change anxiety in young people*, NATURE MENTAL HEALTH 297, 297 (2023).

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> CHARLIE HERTZOG YOUNG, SPINNING OUT: CLIMATE CHANGE, MENTAL HEALTH, AND FIGHTING FOR A BETTER FUTURE 12 (2023); Jennifer A. Francis, *What in the world is weather whiplash?*, BULL. OF THE ATOMIC SCI. (Feb. 9, 2024), <https://thebulletin.org/2024/02/what-in-the-world-is-weather-whiplash/>. [https://perma.cc/243Z-JP3M].

<sup>85</sup> *Id.*

<sup>86</sup> Summer Allen, *Is climate grief something new?*, AM. PSYCHOLOGICAL ASS’N (Feb. 19, 2020), <https://www.apa.org/members/content/climate-grief>. [https://perma.cc/QTS6-2KWY].

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

new extreme weather pattern occurs every day—a constant reminder of a new normal.<sup>89</sup> Climate grief can manifest as anticipatory or “transitional,” which describes the process of grieving losses before they materialize.<sup>90</sup> The sense of doom is prevalent, along with anxious feelings of knowing disasters will occur but not knowing when, where, or to whom.<sup>91</sup> This can be exacerbated by feelings of “institutional betrayal,” or the type of psychological trauma manifested when institutions perpetuate or turn away from harm done to individuals who depend on them.<sup>92</sup> A form of “systemic gaslighting,” institutional betrayal denies the harm done to the individual and can lead to feelings of disappointment, doubt, and shame.<sup>93</sup> Climate grief, anticipatory climate grief, and institutional betrayal are difficult emotions to process and can be a very lonely experience.<sup>94</sup>

### 3. Solastalgia: A Mix of Emotions

Solastalgia is a concept developed by Australian philosopher Glenn Albrecht in 2007 to provide further meaning to environmentally induced distress.<sup>95</sup> Solastalgia describes the “distress that is produced by environmental change, exacerbated by a sense of powerlessness or lack of control over the process.”<sup>96</sup> Albrecht summarizes solastalgia as a “lived experience of the desolation of a much-loved landscape,” but these feelings can eventually become the “catalyst” for action on the world’s behalf.<sup>97</sup> Further literature summarizes solastalgia as a “place-based lived experience” that deteriorates proportionally to the growing intensity of global climate change.<sup>98</sup> Those displaced by climate disasters may experience this loss and longing related to their severed connection to cultural or spiritual land.<sup>99</sup> If

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<sup>89</sup> *Id.*

<sup>90</sup> Panu Pihkala, *Climate grief: How we mourn a changing planet*, BBC (Apr. 2, 2020), <https://www.bbc.com/future/article/20200402-climate-grief-mourning-loss-due-to-climate-change>. [<https://perma.cc/MZ24-F2WD>].

<sup>91</sup> *What is Climate Grief?*, Climate Emergency Manchester, <https://climateemergencymanchester.net/student-climate-handbook/part-1-climate-grief-and-our-mental-health/what-is-climate-grief>. [<https://perma.cc/QC5E-DBUG>].

<sup>92</sup> Melanie Ho, *What is “institutional betrayal”?*, MEDIUM (Oct. 21, 2021), <https://medium.com/@melanie-ho/what-is-institutional-betrayal-84d81c5c5523>. [<https://perma.cc/U6ZB-9W3S>].

<sup>93</sup> *Id.*

<sup>94</sup> *What is Climate Grief?*, *supra* note 91, at 04.

<sup>95</sup> Glenn Albrecht et al., *Solastalgia: the distress caused by environmental change*, 15 AUSTL. PSYCHIATRY, Supp, 95–98 (2007).

<sup>96</sup> *Id.*

<sup>97</sup> PAUL BOGARD ET AL., SOLASTALGIA: AN ANTHOLOGY OF EMOTION IN A DISAPPEARING WORLD xv (2023).

<sup>98</sup> Lindsay P. Galway et. al., *Mapping the Solastalgia Literature: A Scoping Review Study*, 16 INT’L J. ENV’T. RSCH. AND PUB. HEALTH 1, 2 (2019).

<sup>99</sup> Edward P. Richards, *The Societal Impacts of Climate Anomalies During the Past 50,000*

the climate changes at the current predicted rate, solastalgia will contribute to a “quickenning spiral of mental illness” among a crowded population.<sup>100</sup> Paul Bogard, author and environmentalist, believes that “to feel solastalgia is to feel pain, sorrow, and grief, but it is also to recognize that the source of the pain is the love for the places of which we are part,” such as the Earth.<sup>101</sup> He believes that within that love “lies the energy to defend the world we have known” and to collectively “create the future we want for our children and grandchildren . . . .”<sup>102</sup>

### C. Factual Background: Intergenerational Justice and Equity

Intergenerational justice theory argues “that the rights of past, present, and future generations to live on a healthy planet are equal.”<sup>103</sup> While future generations cannot influence present actions, the choices people make today will profoundly shape their lives.<sup>104</sup> Intergenerational justice assumes that future people will hold rights, that those rights will be determined by their interests, and that the current populace’s actions and policies will affect those interests.<sup>105</sup> This theory speaks to the obligations and entitlements that past and future people can potentially generate.<sup>106</sup> In the context of climate change, “intergenerational justice calls for immediate action to protect future generations from experiencing the worst effects of climate disasters.”<sup>107</sup> Ensuring intergenerational justice demands attention not only to future generations but also to “youth and children already living whose existence is detrimentally impacted by the changing climate.”<sup>108</sup>

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*Years and their Implications for Solastalgia and Adaptation to Future Climate Change*, 18 HOUS. J. OF HEALTH L. AND POL’Y 131, 148 (2018).

<sup>100</sup> R. Louv., *The Nature Principle: Reconnecting with Life in a Virtual Age* (2011).

<sup>101</sup> PAUL BOGARD ET AL., SOLASTALGIA: AN ANTHOLOGY OF EMOTION IN A DISAPPEARING WORLD XXI (2023).

<sup>102</sup> *Id.*

<sup>103</sup> Erika Strazzante, *Intergenerational justice, or how to be a good ancestor*, GENERATION CLIMATE EUR. (July 29, 2022), <https://gceurope.org/intergenerational-justice-or-how-to-be-a-good-ancestor/>. [https://perma.cc/B43W-EP5J].

<sup>104</sup> *Id.*

<sup>105</sup> Lukas Meyer, *Intergenerational Justice*, STAN. ENCYCLOPEDIA OF PHIL. (Edward N. Zalta ed., 2003) (rev. 2021), <https://plato.stanford.edu/archives/sum2021/entries/justice-intergenerational/>. [perma.cc/KUM6-WXSF].

<sup>106</sup> Andres Santos Campos, *Intergenerational Justice Today*, 13 PHIL. COMPASS e12477, (abstract) (2018), <https://compass.onlinelibrary.wiley.com/doi/epdf/10.1111/phc3.12477>.

<sup>107</sup> *Reflections on The Call for Inputs: Enhancing climate change legislation, support for climate change litigation and advancement of the principle of intergeneration justice*, THE GLOB. NETWORK FOR HUM. RTS. AND THE ENV’T (July 7, 2023),

<https://www.ohchr.org/sites/default/files/documents/issues/climatechange/cfi-enhancing-climate-change-legislation/CFI-SR-Climate-GA-2023-NGO-global-network.pdf>.

[https://perma.cc/X99X-CETW].

<sup>108</sup> *Id.*

Intergenerational *equity* meanwhile refers to “the fairness in access and use of planetary resources across time.”<sup>109</sup> It accounts for both (1) “the relationship between each generation and all other generations” and (2) “the relationship between humanity and nature.”<sup>110</sup> Equity does not require absolute balance but aims to achieve a fair balance of present and future needs.<sup>111</sup> For intergenerational progress with climate action and resource allocation, both justice and equity must exist.<sup>112</sup> To meet the goals of intergenerational equity, the forgotten generation of today’s youth must have a seat at the table to ensure their interests are represented.

## PART II: MONTANA STANDING CASE LAW AUTHORIZING YOUTH PSYCHOLOGICAL INJURIES AS COGNIZABLE

### A. *Montana Precedent Supports Recognizing Psychological Injuries as Cognizable for Injury in Fact Standing Purposes*

Generally, the Montana Supreme Court applies a standard view of federal injury in fact standing; however, the state’s case law confirms it can and should be flexible in the face of modern climate change-related mental health issues. This section applies Montana Supreme Court decisions to *Held* to prove that recognizing psychological injuries as cognizable for injury in fact standing is appropriate under state precedent. A review of the case law on injury in fact standing, plus the limited opinion on psychological injury outlines the Montana Supreme Court’s potential view of the claims made in *Held*. Applying this case law to the *Held* facts establishes that the plaintiffs had specific cognizable psychological injury claims and had the requisite causation and redressability to support those claims.

The Montana Supreme Court has acknowledged that psychological harms are concrete on their own for standing purposes.<sup>113</sup> The *Gryczan* decision, although three decades old, illustrates the Montana Supreme Court’s willingness to progressively expand standing beyond federal limits when necessary for state constitutional claims.<sup>114</sup> This decision leaves crucial space for judicial discretion and adaptation to modern issues by using controlled yet considerate language and tone.<sup>115</sup>

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<sup>109</sup> Lydia Slobodian, *Defending the Future: Intergenerational Equity in Climate Litigation*, 32 GEO. ENV’T. L. REV. 569, 571 (2020).

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Gryczan*, *supra* note 69 at 446.

<sup>114</sup> *Id.*

<sup>115</sup> *See Gryczan*, *supra* note 69 at 446 (employing a matter-of-fact tone in granting standing to respondent’s claims, stating, “to deny Respondents standing would effectively immunize the statute from constitutional review”); *see also Sanders*, 267 Mont. at 119 (holding that

Applying Montana’s standing precedent to *Held* establishes a clear path to finding cognizability in the claims for injury in fact purposes, traceable causation, and adequate redressability. While the psychological injuries expressed in *Held* are specific to its youth plaintiffs, these psychological injuries are impacting young people throughout the state and country. Dr. Cathy Whitlock, a distinguished professor of Earth Sciences at Montana State University, testified in the *Held* trial as an expert witness that climate change is and will harm Montana’s children.<sup>116</sup> The youth plaintiffs suffered psychological injury from climate change and governmental ignorance in ways that, while not exclusive to them, can be clearly distinguished from the broader public experience.

The psychological injuries the plaintiffs allege adhere to the *Sanders* precedent that injuries must not be shared among the public but need not be exclusive to the plaintiff.<sup>117</sup> At trial, psychiatrist Dr. Lise van Susteren explained how some of the plaintiffs felt betrayed watching their government deliberately ignore climate change, some even expressing a reluctance to have children as a result.<sup>118</sup>

Additionally, pediatrician Dr. Lori Byron testified to this unique vulnerability children experience in the face of the climate crisis.<sup>119</sup> Because they are still developing, they are at higher risk for both physical harm in a natural disaster and psychological injury in swallowing the current reality.<sup>120</sup> In *Held*, the youth plaintiffs testified to feelings of immense grief, depression, anxiety, and loss of important Indigenous cultural activities due to the changing climate in Montana.<sup>121</sup> Moreover, they alleged past, present, and future psychological injuries resulting from the lack of protection from the state government.<sup>122</sup> Arguing that their constitutional right to a clean and

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the plaintiff’s allegation was “clearly personal to himself” when asserting a property-related injury).

<sup>116</sup> Tr. of Proc. at 237–242, *Held v. State of Mont.*, No. CDV-2020-307, Mont. 1st Dist. Ct. (Aug. 14, 2023).

<sup>117</sup> *Sanders*, 267 Mont. at 119; *see generally* Whitlock, *supra* note 81, at 297-98.

<sup>118</sup> Tr. of Proc., *supra* note 115, at 13.

<sup>119</sup> *Id.* at 16-7.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.* at 14, 207, 446, 449, 492, 561, 580, 603, 771. Plaintiffs Lilian and Ruby are part of the Crow Nation wear traditional leather outfits which can become increasingly warm and uncomfortable to wear with increasing temperatures. *Id.* at 492. They attend the Crow Fair yearly. *Id.* at 492. This important event is also becoming more dangerous due to extreme weather. *Id.* at 492. Plaintiff Sariel is part of the Confederated Salish Kootenai Tribe, which for thousands of years has lived off the land on the Flathead Reservation in Montana through subsistence hunting and gathering for food and medicine. *Id.* at 580. As flooding and droughts flip-flop yearly, it is growing more difficult to sustain this way of life. *Id.* at 603.

<sup>122</sup> *Id.* at 86.

healthful environment was violated by the state’s continued subsidizing of fossil fuels, the plaintiffs used their psychological injuries as proof that they had—and continue to have—a personal stake in the controversy.<sup>123</sup> The district court granted standing for the plaintiff’s injuries related to climate change, but it refrained from accepting the plaintiffs reasoning that their psychological injury stemming from institutional betrayal was sufficient on its own to show injury.<sup>124</sup>

This ruling was correct to find injury in fact standing for the plaintiff’s mental injuries, but it should have gone further.<sup>125</sup> The court should have recognized mental injuries as cognizable on their own as related to the state’s inaction and counterproductive measures on climate change.<sup>126</sup> The youth plaintiffs’ anxiety and grief related to climate change are concrete and particularized past, present, and threatened injuries.<sup>127</sup> Employing the *Heffernan* standard, environmental injuries like the *Held* plaintiffs’ loss of cultural land and threatened loss of personal and legal interests constitute cognizable injuries for standing purposes.<sup>128</sup> While some argue these concerns are “hypothetical and hinge on unknown future events”, *Chipman* illustrates that threatened impacts can remain cognizable even with some uncertainty.<sup>129</sup> Furthermore, the youth plaintiffs did not simply have a general interest in the legality of a government action like in *Larson*; they had causally related psychological responses to Montana statutes like in *Gryczan*.<sup>130</sup> This precedent should have been more than enough for the district court to grant standing for the plaintiffs’ mental injuries as related to the state’s institutional betrayal of their generation and violation of their constitutional rights.

*B. Montana Precedent Supports Recognizing Psychological Injuries as Cognizable When Traceable to Harm*

Regarding Article III standing, Montana law employs a chain of causation

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<sup>123</sup> See Mont. CONST. art. IX, § 1 (codifying the protection of a clean and healthful environment in Montana for present and future generations).

<sup>124</sup> *Held*, *supra* note 18 at 87-88.

<sup>125</sup> *Id.*

<sup>126</sup> See *Id.* at 86 (rejecting plaintiffs’ mental health injuries as not cognizable on their own in the context of direct relation to the state’s violation of plaintiff’s constitutional right to a clean and healthful environment).

<sup>127</sup> Tr. of Proc. at 237–39, *supra* note 115. The plaintiffs have clearly experienced past extreme weather driven by climate change, which can arguably be linked to the state’s blatant disregard for fossil fuel phase-out. The plaintiffs continue to experience these impacts, and projections indicate that conditions will worsen in the future

<sup>128</sup> See *Heffernan*, 360 Mont. at 237.

<sup>129</sup> *Chipman*, 366 Mont. at 461-62; *Gryczan*, *supra* note 69, at 446.

<sup>130</sup> *Larson*, *supra* note 48, at 200; *Gryczan*, *supra* note 69, at 445-46.

test.<sup>131</sup> The Montana Supreme Court described this test as “recogniz[ing] that the injury and the post-injury trauma . . . may take a path anticipated by no one, but nonetheless [is] traceable to the injury itself,” which is then traceable to the source of the harm.<sup>132</sup> The Ninth Circuit has stated victims of psychological injury at the hands of unconstitutional government conduct have non-speculative causation when the cause is the resolution itself.<sup>133</sup>

The court in *Held* rejected the youth plaintiff’s mental injuries related to the institutional betrayal demonstrated by the mere existence of the MEPA limitation.<sup>134</sup> In the second standing element, the court found that Montana’s greenhouse gas emissions caused, contributed to, and “reduce[d] the opportunity to alleviate the Plaintiff’s injuries.”<sup>135</sup> If the court had followed the *Larson* and *Young* precedents, it would have held that the affirmative state actions to promote the fossil fuel industry would have been enough on their own to cause the plaintiff’s psychological injuries related to institutional betrayal.

Additionally, there is a very explicit causal chain made evident by the plaintiff’s ages. All sixteen plaintiffs were under twenty when the case was filed in 2020.<sup>136</sup> Montana’s emissions contributions have directly impacted the youth plaintiffs, now ages five to twenty-two. The compounding climate impacts due to increasing greenhouse gas emissions both cause and contribute to psychological injury the youth plaintiffs face.<sup>137</sup> Each ton of emissions added to the atmosphere worsens the climate crisis and, in turn, worsens the plaintiff’s psychological damage.<sup>138</sup> Climate science can now thoroughly quantify and document Montana’s contributions to greenhouse gas emissions, illuminating the causal and proportional ratio of the increase of greenhouse gas emissions to the acute climate crisis, and psychological injuries.

Montana emits disproportionately high amounts of greenhouse gases for its population—more than 42 other states.<sup>139</sup> An extensive mining

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<sup>131</sup> *Campbell v. Young Motor Co.*, 211 Mont. 68, 72 (1984).

<sup>132</sup> *Id.*

<sup>133</sup> *Larson*, *supra* note 48, at 200; *Young*, *supra* note 51, at 281–82.

<sup>134</sup> *Held*, *supra* note 18, at 87–88.

<sup>135</sup> *Id.* at 88.

<sup>136</sup> Clark Mindock, *Montana judge hands historic win to young plaintiffs in climate change case*, REUTERS (Aug. 15, 2023), <https://www.reuters.com/business/environment/montana-judge-hands-historic-win-young-plaintiffs-climate-change-case-2023-08-14/>. [<https://perma.cc/5XKY-79G6>].

<sup>137</sup> *See* Tr. of Proc., *supra* note 115, at 237.

<sup>138</sup> *See Id.* at 12.

<sup>139</sup> *Id.* at 938–39; *Montana State Profile and Energy Interests*, U.S. ENERGY INFO. ADMIN. (Apr. 20, 2023), <https://www.eia.gov/state/?sid=MT> (explaining that Montana has the nation’s largest recoverable coal reserves (30% of the U.S. total), and accounts for 5% of the total U.S. coal production. Coal-fired power plants produce the largest share of the

economy reliant on coal production has led the cumulative fossil fuel emissions in Montana since 1960 to a total of 3.7 billion metric tons.<sup>140</sup>

In *Held*, OCT called Anne Hedges, who “serves as the co-director and director of policy and legislative affairs” for the Montana Environmental Information Center (“MEIC”), to testify as an expert witness regarding the state’s ignorance of this limitation’s danger.<sup>141</sup> At trial, Ms. Hedges described a 1968 conference held by the state for presenters to detail up-and-coming climate findings.<sup>142</sup> Presentations exhibited dire warnings and potential disaster if the world rejected regulating carbon emissions before the year 2000.<sup>143</sup> MEPA and the Montana environmental constitutional protections were created soon after these findings were presented, and both were adopted almost unanimously.<sup>144</sup> Ms. Hedges further testified to Montana’s increasing awareness of climate change, citing the Intergovernmental Panel on Climate Change reports that the MEIC brought to the state government’s attention in the 1990s.<sup>145</sup>

From the 1960s to present day, the Montana government has known about the link between emissions and climate change and created legislation and constitutional protections to promote a cleaner environment.<sup>146</sup> Still, Montana subsidized fossil fuel projects with disregard for their destructive and existential impacts.<sup>147</sup> Montana legislature’s disregard of scientific warnings and prioritization of economic growth is clearly linked to the growing climate crisis and *Held’s* youth plaintiffs’ psychological injuries.

In prioritizing the state’s investments in the fossil fuel industry, Montana’s legislature was intentionally blind in its failure to consider adverse public health outcomes.<sup>148</sup> Montana’s constitution enshrines this unique right to a “clean and healthful environment” and requires the legislature to

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state’s electricity. The state’s extensive mining system contributes to fossil-fuel dependency, where coal acts as the main driver of the state’s economy) [<https://perma.cc/4H63-QHHZ>].

<sup>140</sup> Tr. of Proc., *supra* note 115, at 941; Clark Mindock *supra* note 135; *U.S. Emissions*, Ctr. for Climate and Energy Sols. <https://www.c2es.org/content/u-s-emissions/> (using EPA data to show that the U.S. emitted nearly 6 billion metric tons of greenhouse gases in 2020).

<sup>141</sup> Tr. of Proc., *supra* note 115, at 781, 784, 796-97.

<sup>142</sup> *Id.* at 797

<sup>143</sup> *Id.* at 797-98

<sup>144</sup> *Id.* at 798

<sup>145</sup> *Id.* at 803.

<sup>146</sup> *Id.* at 797.

<sup>147</sup> *Montana Lawmakers Double Down on Fossil Fuels in 2023 Legislative Session*, MIT CLIMATE PORTAL (July 7, 2023), <https://climate.mit.edu/posts/montana-lawmakers-double-down-fossil-fuels-2023-legislative-session>. [<https://perma.cc/46TR-QCGM>].

<sup>148</sup> *Montana: State Profile and Energy Estimates*, U.S. ENERGY INFO. ADMIN. (Apr. 20, 2023), <https://www.eia.gov/state/?sid=MT> [<https://perma.cc/Y4AT-95DL>].



“provide for the administration and enforcement of this duty.”<sup>149</sup> Montana’s legislature not only violated the *Held* plaintiff’s state constitutional rights, but has contributed to profound psychological injury in the youth. This strongly suggests the plaintiffs proved the causation required for the district court to grant standing for their mental injuries as related to the state’s dangerous decision to ignore climate impacts.

C. *Montana Precedent Supports Recognizing Psychological Injuries as Cognizable When Redressability Can Be Proven*

Montana reviews redressability and relief similar to the Supreme Court. However, the Ninth Circuit recognized redress for psychological injuries in the *Catholic League* case.<sup>150</sup> The court stated that in a constitutional law context, seeking declaratory judgment that a resolution or statute is unconstitutional is legally redressable.<sup>151</sup> In terms of affirmative injunctive relief, or the court ordering the state to act, the Ninth Circuit has said that “emotional injuries, psychological distress, and risk of suicide” likely constitutes “irreparable harm and therefore required injunctive relief.”<sup>152</sup>

Additionally, the Montana Supreme Court held in *Meech* that a “speedy remedy” must be afforded for every injury of “person, property, or character.”<sup>153</sup> In climate change litigation, speedy remedies are critical; delays can be the difference between mitigating the climate crisis and the need for forced adaptation to yet another disaster flowing from failed greenhouse gas emission reductions. The district court in *Held* correctly decided the youth plaintiffs had proven redressability at trial, holding the state of Montana can alleviate injuries by rejecting projects that would lead to the unreasonable degradation of the environment.<sup>154</sup> The court also states that it is possible to prevent future degradation and injuries to the plaintiffs if they are allowed to consider greenhouse gas emissions and climate change during the environmental impact assessment review.<sup>155</sup> The Montana district court did not go so far as to grant affirmative injunctive relief, which would have ultimately remedied the plaintiff’s psychological injuries related to both

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<sup>149</sup> See Mont. CONST. art. IX, § 1 (codifying the protection of a clean and healthful environment in Montana for present and future generations).

<sup>150</sup> *Catholic League for Religious & Civ. Rts. v. City & Cnty. of S.F.*, 624 F.3d 1043, 1052 (2010).

<sup>151</sup> *Id.*

<sup>152</sup> *Porretti v. Dzurenda*, 11 F.4th 1037,1050 (9th Cir. 2021).

<sup>153</sup> *Meech v. Hillhaven West, Inc.*, 238 Mont. 21, 36 (1989) (quoting *Pfost v. State*, 219 Mont. 206, 219 (1985)).

<sup>154</sup> *Held*, *supra* note 18, at 88-89.

<sup>155</sup> *Id.* at 89-90.

climate change and the MEPA limitation.<sup>156</sup> They did, however, grant negative injunctive relief, which prohibits the state from following the now-unconstitutional MEPA limitation.<sup>157</sup>

A clear path to redressability when dealing with fact patterns similar to those of *Held* is uncovered when applying *Catholic League* and *Meech*. In *Held*, the plaintiffs testified to their psychological injuries, and expert witnesses reinforced that these injuries caused by both climate change and the MEPA limitation were concrete and particularized. Under the *Catholic League* standard, the plaintiffs have eligibility for declaratory relief.<sup>158</sup> The district court in *Held* granted declaratory relief by holding the MEPA limitation unconstitutional.<sup>159</sup>

Ultimately, the court forcing Montana to restrain its harmful emissions would best redress Montana's legislature and the fossil fuel industry's violations of the state constitution. Although the court found redressability, the court's cautiousness in rejecting affirmative injunctive relief is understandable, given the political and economic environment in the state. The court should have pushed further into this area of unprecedented jurisprudence as the stability and well-being of their state's youth depended on it.

In conclusion, Montana's case law illustrates how the state can be flexible and progressive in the face of mental and psychological injuries. Montana Supreme Court decisions support recognizing psychological injuries as concrete and causally related to the state's actions.<sup>160</sup> The youth plaintiff's injuries would be adequately redressed if the court had explicitly recognized the state's disregard of climate science through the MEPA limitation as a direct cause of their psychological harm.

### PART III: COMPARING HELD V. MONTANA TO OTHER OUR CHILDREN'S TRUST CASES

#### A. *Standing in Hawai'i: Navahine F. v. Hawai'i Dept. of Transportation*

In January 2022, fourteen young people sued the Hawai'i Department of Transportation, alleging the system's establishment, operation, and maintenance violated their and future generation's state constitutional right

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<sup>156</sup> *Id.* at 102.

<sup>157</sup> *Id.*

<sup>158</sup> See *Johnson v. Supersave Markets*, 211 Mont. 467, 472 (1984).

<sup>159</sup> *Held*, *supra* note 18, at 102.

<sup>160</sup> *Sanders*, 267 Mont. at 119; *Heffernan*, 360 Mont. at 237; *Chipman*, 366 Mont. at 461-62; *Gryczan*, *supra* note 69.

to a clean and healthful environment.<sup>161</sup> The *Navahine* case reflects another climate lawsuit brought on behalf of youth to compel governments to divest from and reject fossil fuels. Although this case does not hinge on psychological injuries, *Navahine* peeks into a future where courts rule passionately in favor of finding standing for the consequences caused by climate change.

In denying a motion to dismiss filed by the state, the Hawai'i trial court granted the plaintiffs' interest in preserving their environment as concrete and cognizable.<sup>162</sup> The court rejected the federal standing test and expressed that the injuries were so concrete as to clearly establish standing.<sup>163</sup> The judge explained that "plaintiffs allege nothing less than that they stand to inherit a world with severe climate change and the resulting damage to our natural resources."<sup>164</sup> Starkly rejecting the state's argument, the court concluded that the "destruction of the environment is a concrete interest."<sup>165</sup> This undeniably powerful language imparts an unambiguous perspective: the youth of America deserve their day in court to challenge the government's decades of inaction in mitigating the climate crisis.

By holding that the "destruction of the environment is a concrete interest," the *Navahine* court opens the door for other courts to consider psychological injuries due to climate change.<sup>166</sup> The *Held* case could have significantly benefited from the Hawai'i court's strong language by considering the plaintiff's psychological injuries related to state action and inaction as cognizable on their own due to the severity and necessity of the circumstances.<sup>167</sup>

#### B. Standing in Utah: *Natalie R. v. State of Utah*

In *Natalie R. v. State of Utah*, youth plaintiffs once again took a stand against a state for its historic and ongoing promotion of fossil fuel use, which is contributing to the climate crisis in violation of the plaintiffs' constitutional rights.<sup>168</sup> Here, Utah does not have a "green amendment" like the one in Montana, so the plaintiffs' alleged violations related to their state constitutional rights to life, health, and safety.<sup>169</sup> The plaintiffs in *Natalie*

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<sup>161</sup> *Navahine F. v. Hawaii Dep't. of Transportation*, No. 1CCV-22-0000631 1, 3 (Haw. 1st Cir. filed June 1, 2022).

<sup>162</sup> Ruling on Mot. to Dismiss at 10, *Navahine F. v. Haw. Dep't. of Transp.*, No. 1CCV-22-0000631, Haw. 1st Cir. Apr. 6, 2023.

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> *Held*, *supra* note 18, at 26.

<sup>168</sup> *Natalie R. v. State of Utah*, No. 220901658 1, 2 (Utah 3d Dist. Ct. filed Mar. 15, 2022).

<sup>169</sup> *Id.*

asserted that “they are uniquely vulnerable to and face disproportionate harm to their psychological health and safety as a result” of Utah’s fossil fuel economy.<sup>170</sup> The plaintiffs in *Natalie* asked the court to declare unconstitutional “policy explanations” in two statutes related to the burning of fossil fuels.<sup>171</sup>

Unlike in *Held*, the court concluded that Utah’s state constitution does not allow redress for the youth plaintiffs in this case, and rather, it was the legislature’s job to fix the issue.<sup>172</sup> The court outlined that the plaintiff’s claims are precluded by the political question doctrine, which “establishes separation of powers between the legislative, judicial, and executive branches,” and that the argument the plaintiffs propose is “contrary to our constitutional system.”<sup>173</sup> In addition to the inability for the “[p]laintiffs’ request equitable relief. . . [to] redress their alleged harms” and preclusion due to the political question doctrine, the court asserted that it would be improper to extend substantive due process.<sup>174</sup> The court declined to offer substantive due process review in this case because it “should not extend the doctrine to areas it has not been previously applied, like global climate change and fossil fuel policy.”<sup>175</sup>

Throughout the decision to dismiss the case, the court cited similar attempts by youth plaintiffs suing in state courts to remedy or compel actions related to climate change.<sup>176</sup> But, in the court’s view, the cited cases had brought non-justiciable claims analogous to those brought by the plaintiffs in *Natalie*.<sup>177</sup> Although claiming the plaintiffs have a “valid concern,” the court made little effort to act, justifying its position upon the argument that the remedies sought could be possible only through a global solution.<sup>178</sup> Thus, instead of creating a precedent to handle material issues relating to the state’s promotion of fossil fuel policy and its impact on global climate change, the court dismissed the case altogether.<sup>179</sup>

### C. Standing in Massachusetts: *Kain v. Mass. Dept. of Env. Protection*

In 2014, four youth plaintiffs sued the Massachusetts Department of

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<sup>170</sup> Mem. Decision & Order at 1, *Natalie R. v. State of Utah*, No. 220901658, Utah 3d Dist. Ct. (Nov. 9, 2022).

<sup>171</sup> *Id.* at 7.

<sup>172</sup> *Id.* at 4-7.

<sup>173</sup> *Id.* at 2, 6-7.

<sup>174</sup> *Natalie R. v. State of Utah*, No. 220901658 1, 2 (Utah 3d Dist. Ct. filed Mar. 15, 2022).

<sup>175</sup> Mem. Decision & Order, *supra* at 2, 6-7.

<sup>176</sup> *Id.* at 3-6.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.* at 2, 8.

<sup>179</sup> *Natalie R. v. State of Utah*, OUR CHILDREN’S TRUST,

<https://www.ourchildrenstrust.org/utah> (case is now on appeal and pending before the Utah Supreme Court). [<https://perma.cc/P83S-973U>]

Environmental Protection (MassDEP), with the help of OCT, for “fail[ing] to perform statutorily mandated duties under a particular subsection of the state Global Warming Solutions Act.”<sup>180</sup> These duties included the requisite “promulga[tion] of regulations establishing a desired level of declining annual aggregate emissions limits for sources . . . that emit greenhouse gases.”<sup>181</sup> MassDEP missed the statutory deadline to promulgate such regulations, which were supposed to be “instituted by January 1, 2012, [and] take effect on January 1, 2013.”<sup>182</sup> The plaintiffs brought suit to compel the state to create and enforce emission limits.<sup>183</sup> The plaintiffs in *Kain* do not assert any physical or psychological claims—only that the MassDEP failed to effectively and meaningfully participate in the state’s climate change regulation.<sup>184</sup> This case was appealed to the Massachusetts Supreme Judicial Court, which ultimately ordered MassDEP to impose limits on annual aggregate greenhouse gas emissions and take additional steps to comply with the Global Warming Solutions Act.<sup>185</sup>

Like *Kain*, the *Held* plaintiffs challenged the state’s manipulation of climate legislation and argued that certain impacts were blatantly ignored.<sup>186</sup> The court in *Kain* refrained from discussing standing because its issue was one of statutory interpretation.<sup>187</sup> The *Held* case could have benefited from this direct standing analysis, but the youth plaintiffs had distinctive injuries buttressed by key research. The *Held* ruling was distinguished through more complexity than the *Kain* argument offers.

## CONCLUSION

Youth all over America suffer some of the worst impacts of climate change with little assistance from the branches of government. Experiencing climate anxiety, grief, solastalgia, stress, and trauma, young people are enduring humanitarian and intergenerational injustice. In a movement to pressure the courts, young people joined forces with OCT attorneys to represent their interests in pressing for action against the climate crisis. *Held v. State of Montana* made history as the first U.S. climate lawsuit to reach a trial and succeed on behalf of youth. In granting the sixteen youth plaintiffs’

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<sup>180</sup> Mem. of Decision & Order on the Pl.’s Mot. for J. on the Pleadings, at 1, *Kain v. Mass. Dep’t. of Env’t. Prot.*, No. 14- 02551 474 Mass. 278 (Mar. 24, 2015). (citing G.L. c. 21N, § 3(d)).

<sup>181</sup> *Id.* at 2.

<sup>182</sup> *Id.*

<sup>183</sup> *Id.* at 3.

<sup>184</sup> *Id.*

<sup>185</sup> *Kain v. Mass. Dep’t. of Env’t.*, 474 Mass. 278, 300 (2016).

<sup>186</sup> *Held*, *supra* note 18 at 1.

<sup>187</sup> Mem. Of Decision, *supra* note 184, at 4.

cognizable injury in fact standing for their psychological injuries related to climate change, the Montana district court solidified a historic ruling. While this decision is a significant win in the climate movement, young people need more profound and meaningful accountability from their governments. The courts ought to hear their unprecedented stories, appreciate their psychological injuries by recognizing the cognizability of the injuries on their own as they relate to institutional betrayal, and offer relief accordingly. Without judicial recognition of youth psychological injuries related to their state government's ignorance and institutional betrayal of their generation's constitutional rights, the *Held* plaintiffs remain vulnerable. This vulnerability may persist, but the next wave of Our Children's Trust youth climate cases is already on its way to the courts, ready and willing to shift the paradigm for current and future generations.