Situating *Held v. Montana* in the Youth Climate Litigation Movement

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I. Introduction

The world is warming. The last nine consecutive years have been the warmest nine years on record and global temperatures in 2022 were 1.6 degrees Fahrenheit, or 0.89 degrees Celsius, above the average for NASA's baseline period between 1951 and 1980.[1] Climatic change has ramifications for the livelihood of individuals and communities across the globe, and this may be particularly true for both today's youths and future generations. Young people today and future generations, under current trends, would be expected to face worsening environmental conditions caused primarily by previous generations. Therefore, global climate change also has important implications for the distribution of burdens among current and future generations.

In their policy report from 2022, Joana Setzer and Catherine Higham addressed how youth plaintiffs have brought suits based on complaints that the climate impact from energy projects in countries such a South Africa and Australia have violated rights enshrined in national and sub-national laws.[2] In their review of research on climate litigation from the same year, Jacqueline Peel, Alice Palmer, and Rebekkah Markey-Towler cover youth-led claims of rights violations based upon climate impact in Colombia and Canada as well.[3]

Held v. Montana represents an important point in the legal history of the United States. This is the first climate-related constitutional law lawsuit to go to trial in the country. In addition to this novelty, the petitioners in this case were a group of youths arguing that their constitutional rights were being violated based largely around intergenerational claims, which refer to the duties and obligations of those born at and living in a similar time to those born and living in future times.[4] The main argument of the plaintiffs was that their fundamental constitutional rights had been violated by agencies in the U.S. state

[1] NASA, 'NASA Says 2022 Fifth Warmest Year on Record, Warming Trend Continues' (2022) NASA.

[2] See Setzer and Higham, 'Global trends in climate change litigation: 2022 snapshot' Grantham Research Institute on Climate Change and the Environment and Centre for Climate Change Economics and Policy, London School of Economics and Political Science (2022).

[3] See Peel, Palmer, and Markey-Towler, 'Review of literature on impacts of climate litigation' Children's Investment Fund Foundation Report (2022).

[4] See Brown Weiss, 'Climate change, intergenerational equity, and international law' (2007) Vermont Journal of Environmental Law 615.

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of Montana which caused dangerous climate disruption through lasting and continued support for fossil fuel activities.[5]

In this article, I begin by briefly discussing the history and current state of youth-led climate litigation. I then move on to covering the growing body of existing literature on youth-led climate litigation. From there, I detail the case background and decision in *Held v. Montana*. I then relate the outcome in *Held v. Montana* to the existing literature on youth climate litigation. I conclude by presenting ways in which the existing literature helps explain certain aspects of the *Held v. Montana* outcomes. I suggest the outcomes of the case can also illuminate areas upon which future work can build by considering *Held v. Montana* in relation to future youth climate litigation. Considering this case in relation to previous work also provides a novel synthesis of youth-led climate litigation. Overall, I suggest that the *Held v. Montana* case can illuminate new arguments for intergenerational justice in youth-based climate cases for future scholarly work to build upon.

II. *Held v. Montana*

On 13 March 2020, sixteen youths filed a lawsuit in Montana state court asserting climate change-based claims under the Montana Constitution against the state of Montana, its governor, and state agencies.[6] The plaintiffs were between the ages of two and eighteen, and argued that they "have been and will continue to be harmed by the dangerous impacts of fossil fuels and the climate crisis."[7] The defendants in the case were state governmental agencies which were involved in the oversight and execution of policy regarding the state energy system and corresponding policies in Montana.[8]

The Montana Constitution confers to all residents "the right to a clean and healthful environment and the rights of pursuing life's basic necessities."[9] The Constitution instructs the State Legislature to "provide for the administration and enforcement of this

[5] Montana First District Court, 13 March, 2020, *Held v. State*, No. CDV-2020-307, 1.

[6] Montana First District Court, 13 March, 2020, *Held v. State*, No. CDV-2020-307, 1.

[7] Montana First District Court, 13 March, 2020, *Held v. State*, No. CDV-2020-307, 1.

[8] Montana First District Court, 13 March, 2020, *Held v. State*, No. CDV-2020-307, 2 f.

[9] The Constitution of the State of Montana Article II, § 3.

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duty," as well as mandates the Legislature to provide adequate remedies "for the protection of the environmental life support system from degradation" and "to prevent unreasonable depletion and degradation of natural resources."[10] The Constitution further provides this right to all citizens regardless of age by establishing that "the rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons."[11]

The complaint filed on behalf of the plaintiffs on 13 March 2020 specifically argued that the defendants had violated their rights by causing dangerous climate disruption under the State Constitution guaranteed under Article II, Section 3; Article II, Section 4; Article II, Section 15; Article II, Section 17; Article IX, Section 1; Article IX, Section 3 of the Montana Constitution; and the Public Trust Doctrine.[12] Article II of the Montana Constitution concerns the rights which the plaintiffs found to be violated. Article II, Section 3 relates to the "Inalienable rights" afforded to the plaintiffs. Article II, Section 4 concerns "Individual dignity" guaranteed to the plaintiffs. Article II, Section 15 concerns the "Rights of persons not adults", meaning the specific youth-based rights afforded to the plaintiffs. Article II, Section 17 concerns "Due process of law" afforded to the plaintiffs.

Article IX of the Montana Constitution specifically concerns environment and natural resources. Article IX, Section 1 relates to "Officers", which in this case concerns the Montana State Legislature. Article IX, Section 3 relates to "Qualifications", which in this case concerns the specific environmental- and natural resources-related duties for which the Montana State Legislature is responsible. In their complaint, the applicants argued that the Montana State Legislature was responsible for ignoring actions to protect them against climate change under Article IX, Section 3 whereby the Legislature is obliged to "provide adequate remedies for degradation of the environmental life support system and to prevent unreasonable degradation of natural resources."[13]

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[10] The Constitution of the State of Montana Article IX, § 1.

[11] The Constitution of the State of Montana Article II, § 15.

[12] Montana First District Court, 13 March, 2020, *Held v. State*, No. CDV-2020-307, 2 f.

[13] Montana First District Court, 28 September 2023, *Held v. Montana*, Notice of Appeal to the Supreme Court of the State of Montana, DA 23-0575, 19.

The Public Trust Doctrine refers to a legal principle in the United States whereby certain natural and cultural resources are specifically preserved for public use.[14] The public trust doctrine plays a prominent role in environmental law in the United States, as it creates an affirmative duty for the government to protect these resources. These resources are maintained by a trust, which is a form of division of property rights and a fiduciary relationship, in which ownership of assets goes to a third party, known as a trustee, and the beneficial enjoyment goes to the beneficiary.[15] In this case, the public owns natural and cultural resources, such as rivers, lakes, parks, and wildlife, while the government is tasked with protecting and maintaining these resources. Thus, in the public trust context, this translates to a government duty to restore damaged natural resources.[16] This is relevant to *Held v. Montana*, as the public trust doctrines provides a pathway for plaintiffs to argue that the government is required to expand their actions to address climate change.

The Montana Legislature passed the Montana Environmental Policy Act (MEPA) in pursuit of the government's obligation under Article II, Section 3, and Article IX of the Montana Constitution in 1993 to further develop energy resources.[17] MEPA was designed to ensure the environment is "fully considered" and "the public is informed of the anticipated impacts" of all state actions,[18] while enumerating the constitutional duties of the Montana Legislature: to "prevent, mitigate, or eliminate damage to the environment and biosphere" by requiring environmental assessments to outline the anticipated impacts of state projects or actions.[19]

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[14] Legal Information Institute, 'public trust doctrine' *Cornell Law School* <https://www.law.cornell.edu/wex/public_trust_doctrine# > accessed 1 December 2023.

[15] For further information see Legal Information Institute, 'trust' *Cornell Law School* <https://www.law.cornell.edu/wex/trust> accessed 1 December 2023.

[16] Quirke, 'The public trust doctrine: A primer' (2016) University of Oregon School of Law Environmental and Natural Resources Law Centre 15 (16 f).

[17] The Constitution of the State of Montana Article II, § 3.

[18] Montana Code Annotated § 75-1-102(1).

[19] Montana Legislative Services Division, Energy and Telecommunications Interim Committee, 'Montana's Energy Policy Review' (2010) 9 f.

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On April 24, 2020, the defendants filed a motion to dismiss pursuant to the Montana Rules of Civil Procedure sections 12(6)(1), 12(6)(6), and 12(h)(3). (Doc. 11),[20] which contended that the sixteenth youths lacked standing, that the complaint was not redressable, and that the plaintiffs had not exhausted all available remedies.[21] The defendants claimed that the plaintiffs lacked standing, as under Montana law, a plaintiff or plaintiffs must "clearly allege past, present, or threatened injury to a property or civil right" and the alleged injury must "be concrete, meaning actual or imminent, and not abstract, conjectural, or hypothetical; redressable; and distinguishable from the public generally" in order to establish case-or-controversy standing.[22] More specifically, it was claimed the alleged injuries raised by the plaintiffs were not caused by the State Energy Policy or MEPA's Montana limitation; the argument was made that the State Energy Policy is not specific enough to relate to the specific injuries alleged by plaintiffs and that MEPA is only established to inform the public and the State Legislature.[23]

The defendants contended that the claims of the plaintiffs were not redressable as a result of the fact that the remedy for state constitutional violations is to invalidate the offending statute.[24] In this case, the defendants argued that both the Montana state courts and federal courts in the United States had previously failed to grant the relief which the plaintiffs had requested, based primarily upon the position that the scope of the plaintiffs' claims were too broad to be distilled to one or two constitutional challenges.[25] Finally, with regards to the question of exhausting all available remedies, the defendants stated

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[20] Montana Code Annotated § 75-1-102(2), (3).

[21] Montana First District Court, 24 April 2020, Motion to Dismiss, *Held v. State*, No. CDV-2020-307.

[22] Montana First District Court, 24 April 2020, Motion to Dismiss, *Held v. State*, No. CDV-2020-307 (7 f).

[23] Montana First District Court, 24 April 2020, Motion to Dismiss, *Held v. State*, No. CDV-2020-307. 7 (11 ff).

[24] Montana First District Court, 24 April 2020, Motion to Dismiss, *Held v. State*, No. CDV-2020-307 (11 f).

[25] Montana First District Court, Motion to Dismiss, *Held v. State*, No. CDV-2020-307 11 (12 f).

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that the plaintiffs' claims were based upon multiple administrative decisions, but that the plaintiffs had not yet exhausted options relating specifically to MEPA.[26]

On August 4, 2021, however, the Montana District Court supported the plaintiffs' request for declaratory judgement after considering the motion by the defendants, holding that the motion could be heard at trial.[27] The Court concluded that youth plaintiffs had standing for their claims that the Montana State Energy Policy and the "Climate Change Exception"[28] to the Montana Environmental Policy Act (MEPA) violates the Montana Constitution—which includes provisions declaring that Montana citizens possess an inalienable right to a clean and healthful environment—and the public trust doctrine.[29] The Court also found that the harms would be redressable by declaratory relief, which outlines the rights of parties without ordering any specific action or listing awards for damages,[30] but that the plaintiffs did not qualify for injunctive relief by way of a remedial plan or an accounting of greenhouse gas emissions, because it would violate the political question doctrine.[31] The Court further rejected the argument on the part of the defendants that the plaintiffs had failed to exhaust administrative remedies, meaning the plaintiffs could bring a direct action in court without seeking administrative review first.[32]

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[26] Montana First District Court, 24 April 2020, Motion to Dismiss, *Held v. State*, No. CDV-2020-307 16 (19 ff).

[27] Montana First District Court, 4 August 2021, Order Denying Motion to Dismiss, *Held v. State*, No. CDV-2020-307. A declaratory judgment refers to a judgment from a court used to resolve uncertainty in which the legal obligations and rights of parties to the case are explicitly outlined.

[28] The Climate Change Exception provides that environmental review under MEPA may not include "actual or potential impacts that are regional, national, or global in nature". See Montana Code Annotated § 75-1-201(2)(a).

[29] Montana First District Court, 4 August 2021, Order Denying Motion to Dismiss, *Held v. State*, No. CDV-2020-307. Being granted relief refers to a situation when no tangible injury exists and but a party to a given case seeks a court order to protect its legal rights.

[30] Montana First District Court, 4 August 2021, Order Denying Motion to Dismiss, *Held v. State*, No. CDV-2020-307 (24 f).

[31] Montana First District Court, 4 August 2021, Order Denying Motion to Dismiss, *Held v. State*, No. CDV-2020-307 21 (22 f).

[32] Montana First District Court, 4 August 2021, Order Denying Motion to Dismiss, *Held v. State*, No. CDV-2020-307 (24 f).

On August 14, 2023, the Montana Trial Court ruled in favour of the youth plaintiffs.[33]

The Trial Court determined that the plaintiffs had proven standing in court, which required that they show 1) injury, 2) causation, and 3) redressability.[34] To show injury, plaintiffs must show that they have been a victim of "a concrete harm that is actual or imminent, not conjectural or hypothetical."[35] To show causation, plaintiffs must present a reasonably traceable connection between the complaint and injury.[36] To show redressability, plaintiffs must display that there is "a likelihood that the requested relief will redress the alleged injury."[37]

The plaintiffs were determined to have proven injuries as a result of having "experienced past and ongoing injuries resulting from the state's failure to consider greenhouse gas (GHG) emissions and climate change, including injuries to their physical and mental health, homes and property, recreational, spiritual, and aesthetic interests, tribal and cultural traditions, economic security, and happiness," as well as showing that "mental health injuries stemming from the effects of climate change on Montana's environment, feelings like loss, despair, and anxiety, are cognizable injuries."[38]

For causation, the Court determined there was a fairly traceable connection between "the MEPA Limitation and the state's allowance of resulting fossil fuel GHG emissions, which contribute to and exacerbate Plaintiffs' injuries" as well as "the State's disregard of GHG emissions and climate change, pursuant to the MEPA Limitation, GHG emissions over which the State has control, climate change impacts, and Plaintiffs' proven injuries," and the fact that "Montana's contributions to GHG emissions can be measured incrementally and cumulatively both in terms of immediate local effects and by mixing in the atmosphere and contributing to global climate change and an already destabili[s]ed climate system."[39]

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[33] Montana First District Court, 14 August 2023, *Held v. State*, No. CDV-2020-307.

[34] See Montana Supreme Court, 3 May 2011, *Hefferman v. Missoula City Council*, 255 P.3d 80,91.

[35] See Montana Supreme Court, 3 May 2011, *Hefferman v. Missoula City Council,* 255 P.3d 80,91.

[36] See Montana Supreme Court, 3 May 2011, *Hefferman v. Missoula City Council*, 255 P.3d 80,91.

[37] See Montana Supreme Court, 3 May 2011, *Hefferman v. Missoula City Council*, 255 P.3d 80,91.

[38] Montana First District Court, 14 August 2023, *Held v. State*, No. CDV-2020-307 86 (87 f).

[39] Montana First District Court, 14 August 2023, *Held v. State*, No. CDV-2020-307 87 (88 f).

Finally, for redressability, it was found that "a reduction in Montana's GHG emissions that results from a declaration that Montana's MEPA Limitation is unconstitutional would provide partial redress of Plaintiffs' injuries because the amount of additional GHG emissions emitted into the climate system today and in the coming decade will impact the long-term severity of the heating and the severity of Plaintiffs' injuries" and that the defendants had "discretion to deny permits for fossil fuel activities that would result in unconstitutional levels of GHG emissions, unconstitutional degradation and depletion of Montana's environment and natural resources, or infringement of the constitutional rights of Montanans and Youth Plaintiffs."[40]

In reaching a decision in favour of the youth plaintiffs, the judge determined that a provision of MEPA prohibiting consideration of greenhouse gas emissions and corresponding climate change impacts in environmental reviews (the MEPA Limitation) violated the plaintiffs' right to a clean and healthful environment under the Montana Constitution.[41] The Court also held that a statutory provision limiting the remedies available to MEPA litigants violated the Montana Constitution.[42] This meant that plaintiffs were shown to have a fundamental right to a clean and healthful environment, "which includes climate as part of the environmental life-support system."[43]

In its decision, the Trial Court stated that what "happens in Montana has a real impact on fossil fuel energy systems, CO2 emissions, and global warming"[44] and that the defendants' previous actions to allow activities supporting fossil fuels without a review of greenhouse gas emissions or the impacts of climate change served to "exacerbate anthropogenic climate change and cause further harms to Montana's environment and its citizens, especially its youth."[45] The Court found that the "unrefuted testimony at trial established that climate change is a critical threat to public health" and that there was sufficient evidence presented that the plaintiffs "have been and will continue to be

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[40] Montana First District Court, 14 August 2023, *Held v. State*, No. CDV-2020-307 88 (90ff).

[41] Montana First District Court, 14 August 2023, *Held v. State*, No. CDV-2020-307 102 (103 f)..

[42] Montana First District Court, 4 August 2021, Order Denying Motion to Dismiss, *Held v. State*, No. CDV-2020-307 23 f.

[43] Montana First District Court, 14 August 2023, *Held v. State*, No. CDV-2020-307 102 (103 f)..

[44] Montana First District Court, 14 August 2023, *Held v. State*, No. CDV-2020-307 102 (103 f)..

[45] Montana First District Court, 14 August 2023, *Held v. State*, No. CDV-2020-307 70 f.

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harmed by the State's disregard of pollution and climate change pursuant to the MEPA Limitation."[46]

The Court determined that there was a meaningfully traceable connection between the disregard of greenhouse gas emissions on the part of state agencies pursuant to the MEPA Limitation and the plaintiffs' injuries.[47] In relation to this connection, the plaintiffs proved redressability because the defendants could deny permits for fossil fuel activities which would result in unconstitutional levels of greenhouse gas emissions.[48] By enacting and enforcing the MEPA Limitation, the state had failed to meet its positive duty to manage emissions levels.

The Court also found that the MEPA Limitation provision did not survive strict scrutiny,[49] as the defendants had failed to present evidence of a compelling governmental interest for the provision.[50] Further, it was the position of the Court that, even if a compelling interest were established by the defendants, the MEPA Limitation was not sufficiently narrowly tailored to serve this interest.[51] Based upon undisputed testimony presented, the Court determined that "clean renewable energy is technically feasible and economically beneficial."[52]

As a result of the Court's decision, the attorney general's office for the state of Montana indicated they would appeal the decision made by the Trial Court to the Montana

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[46] Montana First District Court, 14 August 2023, *Held v. State*, No. CDV-2020-307 46 f.

[47] Montana First District Court, 14 August 2023, *Held v. State*, No. CDV-2020-307 87 f.

[48] Montana First District Court, 14 August 2023, *Held v. State*, No. CDV-2020-307 102 f.

[49] Strict scrutiny is a form of judicial review that courts use to determine the constitutionality of certain laws. Strict scrutiny is the highest standard of review which a court will use to evaluate the constitutionality of governmental discrimination. The other two standards are intermediate scrutiny and rational basis review. Strict scrutiny is often used by courts when a plaintiff sues the government for discrimination. To pass strict scrutiny, the legislature must have passed the law to further a "compelling governmental interest," and must have narrowly tailored the law to achieve that interest. For further information, see Legal Information Institute, "strict scrutiny," *Cornell Law School*. <https://www.law.cornell.edu/wex/strict_scrutiny>.

[50] Montana First District Court, 14 August 2023, *Held v. State*, No. CDV-2020-307.

[51] Montana First District Court, 14 August 2023, *Held v. State*, No. CDV-2020-307. 100 f. *Held v. State*, No. CDV-2020-307, (Mont. 1st Dist. Ct. Aug. 14, 2023) 100 f.

[52] Montana First District Court, 14 August 2023, *Held v. State*, No. CDV-2020-307. 101 f. *Held v. State*, No. CDV-2020-307, (Mont. 1st Dist. Ct. Aug. 14, 2023) 101 f.

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Supreme Court, the highest court of the state court system in the U.S. state of Montana.[53] On 29 September 2023, the state of Montana moved to dismiss the complaint arguing that the plaintiffs lacked case-or-controversy standing, presented a claim barred by a prudential limitation, and failed to exhaust administrative remedies.[54]

On 16 January 2024, the Supreme Court of the state of Montana declined the appeal from the state of Montana.[55] The Montana Supreme Court determined that the state government had not demonstrated that the District Court abused its discretion in determining that this factor preponderates against a stay, that the state failed to meet its burden to prove that the District Court abused its discretion in denying a motion to stay, and that the District Court did not act arbitrarily or exceed its bounds in its ruling.[56]

III. Youth Climate Litigation

Cases of climate litigation with human rights claims have increasingly been filed by plaintiffs who fall into the category of young people or youths and argue that climate change poses a particular threat to this group.[57] These cases involve applicants who specifically include, in one or more of their claims, reference to the violation of rights which are specific to the distinct group category of young people or youth. In spite of this, there is no legally recognised or agreed upon definition of a specific age range for "youth" in these cases. One notable consequence resulting from the fact that there is no legally recognised definition of a specific age range for youth is that it can be harder to capture exactly when youth rights have been violated. It is possible, then, that the plaintiffs' claims would be less likely to receive a favourable ruling from courts without a clearly defined age range which constitutes "youth".

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[53] Montana Supreme Court, 29 September 2023, On appeal from the Montana First Judicial District Court, *Held v. State*, CDV 2020-307.

[54] Montana Supreme Court, 29 September 2023, On appeal from the Montana First Judicial District Court, *Held v. State*, CDV 2020-307.

[55] Montana Supreme Court, 16 January 2024, *Held v. State*, DA 23-0575.

[56] Montana Supreme Court, 16 January 2024, *Held v. State*, DA 23-0575.

[57] Ziebarth, 'Existing Challenges and Possible Pathways for Case Success in Climate Litigation with Human Rights Claims' (2024) *St. Mary's Law Journal* 524 (527 ff).

Youth-based human rights claims in climate litigation commonly rely on violations relating to the principle of 1) disproportionate impact and/or 2) intergenerational justice.[58] Disproportionate impact concerns the issue of young people and future generations bearing disproportionate impact from the negative consequences of climate change.[59] Broadly speaking, intergenerational justice concerns the relationship between different generations, which we can think of as the progression from children to parents to grandparents and beyond. Intergenerational justice is then the idea that present generations have certain duties towards future generations, and these duties can manifest themselves in legal rights.[60]

Climate change raises particularly pressing issues, such as the acceptable extent of foreseeable existential risk created by future generations, and how available natural resources can be used without threatening the sustainable functioning of the planet's ecosystems.[61] This brings forth legal questions regarding imposing intergenerational risk and the ethical requirements of a governance system which includes just and sustainable natural resource maintenance. This relates, then, to climate change as previous generations have contributed to climate change, and current generations are contributing to climate change; these actions will affect future generations who must live in the world given to them by these generations. This means that considering the effects of the current generation on subsequent generations can be viewed as a form of distributive justice, where present generations hold an obligation towards future generations.[62]

The perspective that the effects of the current generation on subsequent generations as a relevant concern in regard to distributive justice has begun to manifest itself concretely in legal cases. Recent work studying, in part, 17 cases of climate litigation with human rights claims found that youth-led claims overall are less likely to result in favourable

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[58] See Ziebarth, St. Mary's Law Journal 511.

[59] Chalifour, Earle, and Macintyre, 'Coming of age in a warming world: The Charter's Section 15 (1) equality guarantee and youth-led climate litigation' (2021) *Journal of Law and Equality* 1 f.

[60] Cohen, *Justice across generations: What does it mean?*. (Washington, DC: Public Policy Institute, American Association of Retired Persons, 1993) (1 f).

[61] UNICEF, "Climate Change and Intergenerational Justice". *UNICEF*, (2012). <www.unicef-irc.org/article/920-climate-change-and-intergenerational-jus>.

[62] Knappe and Renn, 'Politicization of intergenerational justice: how youth actors translate sustainable futures' (2022) *European Journal of Futures Research* (1 f).

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decisions for plaintiffs in courts.[63] However, the paper also notes that climatic conditions have been accelerated by industrialisation and increased fossil fuel consumption which began generations before current youths were alive.[64] As such, it notes that the continued effects of climate change are expected to disproportionately affect currents youths and future generations.[65]

On a domestic scale, in the case of *Neubauer, et al. v. Germany*, a group of young German citizens filed a legal challenge to Germany's Federal Climate Protection Act ("Bundesklimaschutzgesetz", hereinafter referred to as "KSG") in the Federal Constitutional Court in February 2020.[66] The petitioners argued that the target of reducing greenhouse gas emissions by a level 55% by the year 2030 in comparison to 1990 levels was insufficient in protecting their constitutional rights. The complainants alleged that the KSG's 2030 target did not take Germany's and the European Union's obligation under the Paris Agreement to limit global temperature rise to "well below 2 degrees Celsius" into account.[67] These claims related to domestic laws concerning the fundamental right to a future consistent with human dignity enshrined in Article 1 (1) of the Basic Law, as well as the fundamental right to life and physical integrity enshrined in Article 2 (2) of the Basic Law.[68] These rights are both in conjunction with Article 20a of the Basic Law, which binds the political process to protect the natural foundations of life due to the responsibility for future generations.[69]

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[63] See Ziebarth, *St. Mary's Law Journal* 524 f.

[64] See Ziebarth, *St. Mary's Law Journal* 525 f

[65] See Ziebarth, St. Mary's Law Journal 524 f.

[66] German Bundesverfassungsgericht [BVerfGBVerfG] [Federal Constitutional Court], 6 February 2020, 1 BvR 2656/18. Complaint regarding Bundesklimaschutzgesetz (BGBl. I (2019) S. 2513 ff) Gesetzgeberisches Unterlassen.

[67] German Bundesverfassungsgericht [BVerfGBVerfG] [Federal Constitutional Court], 6 February 2020, 1 BvR 2656/18. Complaint regarding Bundesklimaschutzgesetz (BGBl. I (2019) S. 2513 ff) Gesetzgeberisches Unterlassen.

[68] Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court], Mar. 24, 2021, Case No. BvR 2656/18/1, BvR 78/20/1, BvR 96/20/1, BvR 288/20.

[69] Bundesverfassungsgericht [BVerfG] [Federal Constitutional Court], Mar. 24, 2021, Case No. BvR 2656/18/1, BvR 78/20/1, BvR 96/20/1, BvR 288/20.

On 24 March 2021, the Federal Constitutional Court ruled that the KSG violated the constitutional rights of future generations.[70] These rights had been enshrined in the Basic Law (das Grundgesetz) of Germany. The Court found that Article 20a of the Basic Law required the Federal Legislature to protect citizens' rights by achieving emissions reductions targets, as well as to take into account "how environmental burdens are spread out between different generations."[71]

This was the first time the German Constitutional Court recognised that the protection against greenhouse gas reduction is afforded as a fundamental right within Article 20a of the Basic Law[72] as well as its relation to intergenerational justice. The Court emphasised the state's duty of protection and its obligation to take climate action without placing an unreasonable burden on young people and future generations. The Court further emphasised that burdens are to be proportionately spread across generations.[73]

On an international scale, sixteen youths made allegations before the Committee on the Rights of the Child (CRC) against Argentina, Brazil, France, Germany, and Turkey in the case of *Sacchi et al. v. Argentina et al.*.[74] The petitioners contended that the defendants had violated their rights resulting from acts and omissions with regard to their contributions to climate change. They specifically alleged that inaction on the part of these countries to sufficiently reduce greenhouse gas emissions had caused and perpetuated climate change, contributing to health concerns and physical concerns while affecting indigenous practices of young people in their countries. The CRC ultimately rejected the petitioners' claim on 12 October 2021, concluding that it was inadmissible on the grounds that the plaintiffs had not exhausted local remedies.[75]

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[70] Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court], 1 BvR 2656/18, Mar. 24, 2021.

[71] Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court], 1 BvR 2656/18, Mar. 24, 2021.

[72] Article 20a of the Basic Law requires that "[m]indful also of its responsibility towards future generations, the state shall protect the natural foundations of life and animals by legislation...in accordance with law and justice, by executive and judicial action, all within the framework of the constitutional order."

[73] Article 20a of the Basic Law.

[74] 33 No. CRC/C/88/D/104/2019 (Oct. 8, 2021). Each of these countries are party to the Convention on the Rights of the Child.

[75] UNCRC, Decision adopted by the CRC under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure in Respect of Communication No. 104/2019, CRC/C/88/D/104/2019 (8 October 2021), para. 10.21.

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In the case of *Duarte Agostinho and Others v. Portugal and 32 Other States* on September 2, 2020, six Portuguese youths filed a complaint with the European Court of Human Rights (ECtHR) against 33 countries.[76] The case is brought against the Member States of the Council of Europe, as well as Norway, Russia, Switzerland, Turkey, Ukraine and the United Kingdom.[77] The complainants had alleged that the respondents fell short of established human rights obligations through their failure to agree to emissions reductions decided upon under the Paris Agreement, which would keep global temperature rises to 1.5 degrees Celsius or below.[78]

The complaint further alleged that the respondents violated human rights through failure to broadly take sufficient action on climate change[79] and relied upon Articles 2, 8, and 14 of the European Convention on Human Rights (ECHR). Article 2 protects the right to life, Article 8 protects the right to privacy, and Article 14 protects the right not to experience discrimination. While a final decision has not been made in the case, the ECtHR recently held a hearing on the case on 27 September 2023.[80]

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[76] UNCRC, *Duarte Agostinho v Portugal and 32 Other States*, App. no. 39371/20. This complaint was permissible within ECHR procedural rules under Article 35 subsection 1 of the European Convention on Human Rights, which states that "[t]he Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of four months from the date on which the final decision was taken." Prior to 1 February 2022, the time limit for filing a complaint to the ECtHR was six months after a final ruling at national level, but this has since been reduced to four months. At the time of the ruling in this case, the time limit was therefore six months.

[77] Member states of the Council of Europe include Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Germany, Greece, Denmark, Estonia, Finland, France, Croatia, Hungary, Ireland, Italy, Lithuania, Luxembourg, Latvia, Malta, the Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain and Sweden.

[78] UNCRC, Duarte Agostinho v Portugal and 32 Other States, App. no. 39371/20 (10 f).

[79] UNCRC, *Duarte Agostinho v Portugal and 32 Other States*, App. no. 39371/20 (11 f). On 19 May 2021 the European Commission received written observations submitted to the European Court of Human Rights. The Commission, in commenting on these observations, stated that legal instruments must play a significant role in defining the scope of states' obligation to prevent climate-related human rights violations caused by environmental harm based upon environmental protections under European Union policies.

[80] European Court of Human Rights/Cour européenne des droits de l'homme, "Grand Chamber hearing concerning 33 member States". European Court of Human Rights/Cour européenne des droits de l'homme. (27 September 2023). <https://www.echr.coe.int/w/grand-chamber-hearing-concerning-33-member-states>.

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Scholarly analysis of the case thus far has suggested that the ECtHR "may adopt a nuanced approach to extra-territoriality tailored to climate cases, drawing inspiration from the Inter-American Court of Human Rights (IACtHR), which developed such standards in its Advisory Opinion OC-23/17, requiring a causal link between the human rights violation committed abroad and the acts in the territory of the State of origin."[81] This nuanced approach to extra-territoriality can be controversial, as territorial sovereignty, the concept that each international state is able to regulate activities within its own territory following its own policies and priorities, has historically been under international law.[82] The plaintiffs in the *Duarte* case made extra-territorial claims based upon the defendants being international states which are signatories to the 2015 Paris Agreement and Article 3 (1) of the United Nations Agreement on the rights of children.[83] Further, the *Duarte Agostinho* case may present an opportunity for the ECtHR to clarify the scope of extra-territorial jurisdiction for climate harm based upon recent standards applied in *Sacchi et al. v. Argentina* that international states have jurisdiction over transboundary climate harm.[84]

Held v. Montana focuses on domestic-based claims, specifically at the state level within the United States. As such, it would be expected that considerations such as those raised in *Neubauer, et al. v. Germany* should be more readily comparable to those in the *Held v. Montana* case. Claims brought before international courts arrive at certain differences largely as a result of the structure of international law, which can vary broadly from domestic legal processes and considerations. Domestic legal systems also differ from one another, however, meaning that there is no perfect comparison across different countries

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[81] Hefti, 'What's next in Climate Litigation before the European Court of Human Rights? Duarte Agostinho and Others v Portugal and 32 other States' (Oxford Human Rights Hub: A global perspective on human rights, (2 May 2023)<https://ohrh.law.ox.ac.uk/whats-next-in-climate-litigation-before-the-european-court-of-human-rights-duarte-agostinho-and-others-v-portugal-and-32-other-states/>.

[82] Zerk, 'Extraterritorial jurisdiction: lessons for the business and human rights sphere from six regulatory areas' *Working Paper No. 59 A Working Paper of the: Corporate Social Responsibility Initiative, Harvard Kennedy School* (2010) 1 (5 f).

[83] European Court of Human Rights, 2 September 2020, Application to the European Court of Human Rights in Claudia Duarte Agostinho & Ors v Portugal & Ors, *Claudia Duarte Agostinho et al*, App No 39371/20, 3 (4 f).

[84] European Court of Human Rights, 2 September 2020, Application to the European Court of Human Rights in Claudia Duarte Agostinho & Ors v Portugal & Ors, *Claudia Duarte Agostinho et al*, App No 39371/20, 3 (4 f).

either and context will always matter. Thus, while *Held v. Montana* may be more suited to be interpreted in comparison to similar domestic cases in other countries, this case can hold importance for how future international legal cases develop and proceed.

IV. Scholarship on Youth Climate Litigation

Although a newly emerging legal area, legal scholars have begun to make progress in presenting analyses and arguments regarding the claims and outcomes behind youth-led climate litigation. Scholars thus far have largely focused on the success of youth-led climate litigation with human rights claims. For example, Rachel Johnston argues that human rights and the long-term nature of climate change disproportionately threatening future generations are linked to intergenerational justice, justifying youth's legal standing.[85] In focusing on the case of *Neubauer et al. v. Germany*, as mentioned previously in this article, Louis Kotze and Henrike Knappe suggest that this proved to be a meaningful example of success in youth-led climate litigation by exploring how young people are becoming more powerful political actors that use climate litigation to ensure intergenerational justice.[86]

Similarly to these scholars, Elizabeth Donger argues that youth are well-placed to make powerful arguments for intergenerational justice. However, in assessing existing cases, Donger also believes that youth-based arguments addressing current grievances, as opposed to future grievances, have been underutilised.[87] Donger suggests that a more consistent inclusion of these types of claims could be able to strengthen youth environmental rights; the inclusion of these claims could also clarify and enforce legal obligations towards youths in the context of the climate crisis while advancing the critical role of youths as stakeholders in climate solutions.[88] In placing similar importance on the role of youth claims to justice relating to climate change, Julie Albers suggests that youth plaintiffs should not be expected to encounter concerns of not meeting conditions of

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[85] Johnston, 'Lacking rights and justice in a burning world: The case for granting standing to future generations in climate change litigation.' (2016) *Tilburg Law Review* 31.

[86] See Kotze and Knappe, 'Youth movements, intergenerational justice, and climate litigation in the deep time context of the anthropocene.' (2022) *Environmental Research Communications* 1.

[87] See Donger, 'Children and youth in strategic climate litigation: Advancing rights through legal argument and legal mobilization.' (2022) *Transnational Environmental Law* 263

[88] Ibid.

University of Vienna Law Review, Vol. 8 No 1 (2024), pp. 179-208, https://doi.org/10.25365/vlr-2024-8-1-179.

standing because of the significant climate impacts that they will endure and the understanding that these risks could be reduced through court.[89]

Beauregard et al. argue that youth-based climate litigation thus far has been confined to holding governments accountable to commitments, such as those overseen by the ECHR, the US Constitution, and the Colombian 'tutela', rather than other justice concerns, such as the fair allocation of costs and benefits among all concerned parties.[90] The tutela is a part of Colombian constitutional law created in 1991 under Article 86 of the Constitution of Colombia.[91] The tutela is a complaint procedure which allows individuals to file their complaint before a judge without the aid of a lawyer when they believe that their fundamental rights have been threatened by acts and/or omissions on the part of a public authority.[92] The tutela must be ruled upon or appealed within ten days of filing.[93] A tutela is required to contain the alleged violated rights and parties in question, but there are minimal formal requirements beyond this; it is thus perceived as a fast and easy course of action to enforce rights protection.[94] Looking at three high-profile cases, *Urgenda v. The Netherlands*,[95] *Juliana v. United States*,[96] *Demanda v. Minambiente*,[97] the authors conclude that progress based upon the positive outcomes for plaintiffs in these cases demonstrate the potential of climate litigation to force greater national and sub-national government action on climate change. This type of litigation,

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[89] Albers. "Human rights and climate change: protecting the right to life of individuals of present and future generations." *Security and Human Rights* 28, no. 1-4 (2018) 113.

[90] Beauregard, Carlson, Robinson, Cobb, and Patton 'Climate justice and rights-based litigation in a post-Paris world' (2021) *Climate Policy* 652 f.

[91] Espinosa and Landau, '*Colombian Constitutional Law: Leading Cases*' (Oxford University Press, 2017) 1 f.

[92] Espinosa and Landau, Colombian Constitutional Law: Leading Cases 1 f.

[93] Espinosa and Landau, Colombian Constitutional Law: Leading Cases 1 f.

[94] See Patrick Delaney, 'Legislating for equality in Colombia: Constitutional jurisprudence, Tutelas, and social reform' (2008) *The Equal Rights Review* 50 (54 f).

[95] *The State of the Netherlands v Urgenda Foundation*, The Hague Court of Appeal (9 October 2018), case 200.178.245/01.

[96] *Juliana v. United States*, 339 F. Supp. 3d 1062, 1105 (D. Or. 2018).

[97] *Demanda Generaciones Futuras v Minambiente*, N.: 11001-22-03-000-2018-00319-01, Supreme Court of Justice, Civil Cassation Chamber, Republic of Colombia, Bogotá, D.C. (4 April 2018).

though, is also shown to serve some types of justice, such as intergenerational justice, better than others, such as distributive justice.[98]

Focusing on youth-led claims in Canada, Camille Cameron and Riley Weyman[99] assess three instances of climate change litigation in Canada, which include *ENvironnement JEUnesse v Procureur général du Canada*,[100] *La Rose v Canada*,[101] and *Mathur v Ontario*.[102] The authors suggest that there is a connection between litigants' procedural choices and early success, either in withstanding a motion to strike, or in obtaining court authorisation to proceed by way of class action.[103] They argue that, while these youth-led and rights-based cases advance claims for present and future generations, they present apparently conflicting judicial views on the justiciability of climate change claims and on the use of the Canadian Charter of Rights and Freedoms to advance such claims.[104] This work presents evidence that early decisions on the part of plaintiffs in rights-based climate cases can play an important role, while courts can simultaneously remain inconsistent in their interpretation of these cases.

While analysis of these existing types of cases tends to lack categorisation for comparative utility, Parker et al. argue that youth-focused climate litigation can fall into one of three categories: (1) insufficient efforts to reduce carbon emissions and meet climate commitments; (2) insufficient efforts to implement mitigation and adaptation measures; and (3) specific regulatory approvals that are expected to have dramatic climate

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[98] Beauregard, Carlson, Robinson, Cobb, and Patton 652 f.

[99] Cameron and Weyman, 'Recent youth-led and rights-based climate change litigation in Canada: Reconciling justiciability, Charter claims and procedural choices' (2022) *Journal of Environmental Law* 195.

[100] *ENvironnement JEUnesse v Procureur général du Canada*, [2019] J.Q. no 5940, 2019 QCCS 2885 (Que. S.C.).

[101] *La Rose v Her Majesty the Queen*, (Federal Court, T-1750-19).

[102] Mathur v His Majesty the King in Right of Ontario, 2023 ONSC 2316 [Mathur #2].

[103] Cameron and Weyman 195 f

[104] Cameron and Weyman, Journal of Environmental Law 195 f

impacts.[105] Further, the authors point towards a trend in which youth-focused cases are dismissed due to a lack of justiciability or standing at a procedural stage. They contend that this undermines youth agency and denies their rights to redress for human rights infringements resulting from worsening climate change.[106]

Jacqueline Peel and Rebekkah Markey-Towler focus on climate litigation with human rights claims more broadly, but include analysis of the *Neubauer v. Germany* case.[107] In this analysis, they suggest that there are six common dimensions that characterise successful climate cases for applicants.[108] These dimensions include: (1) Carefully selecting plaintiffs to communicate a strategic message; (2) engaging an experienced legal team with a track record of bringing other strategic climate legal interventions; (3) targeting defendants which are widely seen to be lagging in their climate action; (4) tying legal arguments closely to the latest climate science; (5) adopting innovative legal arguments, including those emphasising duties of protection; and (6) seeking remedies that extend beyond the situation of individual litigants and contribute to intended policy and regulatory impacts.[109]

V. Considering *Held v. Montana* in Relation to Previous Literature

The outcome in *Held v. Montana* represents a notable outcome in which the Trial Court asserted that Montana's existing energy-related policies violated youth rights to a clean and healthful environment under the State Constitution. In the case, the plaintiffs, who

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[105] Parker, Mestre, Jodoin, and Wewerinke-Singh, 'When the kids put climate change on trial: youth-focused rights-based climate litigation around the world' (2022) *Journal of Human Rights and the Environment* 64. One example of regulatory approvals which have dramatic climate impacts would be the issuing of new mining permits.

[106] Parker, Mestre, Jodoin, and Wewerinke-Singh, (2022) *Journal of Human Rights and the Environment* (64 f).

[107] Peel and Markey-Towler focus on three cases, namely: *Sharma by her litigation representative Sister Marie Brigid Arthur v. Minister for the Environment* ("Sharma"; [2021] FCA 560 (27 May 2021) (Austl.).), *Neubauer v. Germany* ("Neubauer"; Bundesverfassungsgericht [BVERFG] [Federal Constitutional Court], 1 BvR 2656/18 Mar. 24, 2021), *Milieudefensie et al. v. Royal Dutch Shell PLC* ("Shell"; Rb. den Haag, 26 May 2021, Prg. 2021 mnt HA ZA 19-379 (Milieudefensie/Royal Dutch Shell PLC)).

[108] Peel and Markey-Towler. 'Recipe for success?: Lessons for strategic climate litigation from the Sharma, Neubauer, and Shell cases' (2021) *German Law Journal* 1484.

[109] Peel and Markey-Towler, *German Law Journal* 1484 f.

were all youths, were largely successful in achieving the aims of their suit. The Montana Trial Court agreed that the defendants, state agencies and officials, had failed to protect the constitutional rights of the youth plaintiffs. Considering the categories presented by Parker et al, *Held v. Montana* would fall most closely into their first category, which relates to insufficient efforts to reduce carbon emissions.[110]

In relation to the work by Elizabeth Donger, *Held v. Montana* did show that focusing in part on current grievances was a factor in a favourable ruling for the youth plaintiffs. The reasoning that Montana had measurably contributed to GHG emissions levels and allowed fossil fuel activities which had caused tangible physical and mental harm to the plaintiffs was central to the decision of the Montana Trial Court to rule in favour of the plaintiffs. This was connected to the harm that the youth plaintiffs were currently experiencing, both physical and mental. Specifically, this was a result of actions on the part of the defendants which significantly contributed to GHG emissions. This reflects the centrality of how current grievances and their effects on plaintiffs can play an integral role in favourable ruling.

Relating to work by Julie Albers, *Held v. Montana* presents the importance of consideration regarding the ability for youth plaintiffs to hold standing in courts when they seek to hold accused actors accountable for harms relating to climate change.[111] In this case, it was determined that the youth plaintiffs had proven standing by proving 1) injury, 2) causation at trial, and 3) redressability at trial.[112] The Montana Trial Court presented support for the plaintiffs' claims that they had been tangibly harmed, that this was caused by actions and/or lack thereof on the part of the state regarding GHG emissions, and that the Court was able to fulfil remedies claimed by the plaintiffs against the defendants.

It will likely be important in future cases to consider how youth plaintiffs are able to achieve each of these three aspects of standing when bringing forth claims. The *Held v. Montana* case also shows the importance of constitutional clauses which can allow for citizens to have standing in court, even when they are not adults. The breadth of standing

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[110] This category includes meeting climate commitments as well, although this was not present in the *Held* case. Also of brief note is that Parker et al. do not focus on sub-national constitutional commitments like those which were present in *Held v. Montana*.

[111] Albers 113 f.

[112] Montana First District Court, 14 August 2023, *Held v. State*, No. CDV-2020-307, 86 (101 f).

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can then be particularly important when legal scholars and practitioners consider this work in a comparative perspective. For example, states or sub-national government divisions which do not have constitutional clauses providing explicit opportunity for standing among those who are not adults (i.e. youths), which we observed in this case, may present different considerations. Further, considering the work by Camille Cameron and Riley, it appears that the youth plaintiffs in *Held v. Montana* presented their claims in a way which was designed to successfully achieve standing and advance their claims.

The outcome in *Held v. Montana* also largely follows the dimensions posited by Peel and Markey-Towler, and shows that legal tests may adapt to apply to youth-based climate litigation.[113] The early decisions of selecting an experienced legal team and targeting state agencies which have allowed rather extensive fossil fuel activities may have also established a pathway in the early stages which supported the favourable outcome for the youth plaintiffs.

One difference of note is the focus previously put on intergenerational justice by scholars. While previous scholarship, such as that presented in the work by Rachel Johnston, Louis Kotze and Henrike Knappe, and Beauregard et al., has suggested the importance of focusing on claims of intergenerational justice, the *Held v. Montana* case does not suggest that intergenerational justice itself played a key role in the favourable outcome for the youth plaintiffs. Instead, success in the case was largely based upon the ability of the plaintiffs to attribute tangible, current injury resulting from the decisions made by state agencies. This does not necessarily negate the role of intergenerational justice in both extralegal contexts - such as considerations regarding public opinion and issue attention - and legal contexts in all future youth-led climate cases; these arguments can play a role in bringing attention and public support to youth-based climate concerns and could actively shape courts' decisions in different cases. In *Held v. Montana*, however, youth plaintiffs were able to receive a favourable decision on their claims without the Court incorporating concerns linked to intergenerational justice.

VI. Concluding Remarks

The case of *Held v. Montana* marks an inflection point in youth-led, rights-based climate litigation in the United States, and possibly for climate litigation elsewhere. Climate

[113] Peel and Markey-Towler, *German Law Journal* 1484 f.

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change has accelerated in recent years and this trend is projected to continue.[114] This has consequences for how both current and future generations live and interact with one another and their environment. As a result, climate change is not only changing the physical landscape, but is reshaping legal considerations around the globe, particularly as they relate to constitutional and human rights.

While this case is focused on state-level claims in one state within the U.S., the background and outcome of *Held v. Montana*, as well as considerations relating the case to a body of existing literature on youth-led, rights-based climate litigation, can help situate this case within the context of previous and current occurrences of similar legal claims. Additionally, we can also observe unique aspects of the case, such as the ability to achieve legal standing for youth plaintiffs and the constitutionally-outlined requirements for governments to ensure environmental quality. We can seek to apply this novelty to future considerations of how youth-led, rights-based climate litigation in particular may develop and can be applied in different legal contexts.

This case is important in the domestic legal context of the United States in particular. Of note is the fact that precedent is important for future court decisions as a result of the common law system in the United States. This means that the decisions in a previous case play a meaningful role in how courts must hand down future decisions. As a result, precedent set by the ruling in *Held v. Montana* has the ability to serve as the basis for future court decisions to support plaintiffs seeking remedies for injuries argued to be the result of harm from emissions-based or environmental damage. This may also be shown to be an applicable consideration for other legal jurisdictions which follow common law systems. This is due to the fact that legal precedent is significant in future case considerations in these systems, which are primarily found in the United Kingdom and commonwealth countries.

The judgment in *Held v. Montana* was handed down by a court of first instance with remedy pending. While the ruling in *Held v. Montana* serves as a milestone, there are some limits to how it may progress youth-led, rights-based climate litigation. First, on 29 September 2023, the Montana Attorney General filed a notice in the Montana Supreme

[114] Masson-Delmotte, Zhai, Pörtner, Roberts, Skea, and Shukla, Global Warming of 1.5 C: IPCC special report on impacts of global warming of 1.5 C above pre-industrial levels in context of strengthening response to climate change, sustainable development, and efforts to eradicate poverty. (Cambridge University Press, 2022) 1 f.

Court of its appeal of Trial Court rulings in favour of youth plaintiffs.[115] While the plaintiffs have thus far largely been successful in having their claims upheld in court, the Court could arrive at a less supportive ruling for the plaintiffs if the case is accepted and heard before the Montana Supreme Court. Second, the result in *Held v. Montana* was achieved largely on the basis of environmental rights provided by Montana's Constitution and the tradition of public trust doctrine based in the law of the United States.[116]

Consideration of standing may also be particularly important nationally as a result of the ruling in *Held v. Montana*. In *Juliana v. United States*, another notable case in the United States in which a group of youth plaintiffs argued that the federal government violated their constitutional rights by allowing harmful levels of carbon dioxide emissions, a panel in the Ninth Circuit Court dismissed the case in January 2020 on the grounds that the plaintiffs lacked standing to sue for an injunction.[117] Subsequently, on 10 February, 2021, the *en banc* Ninth Circuit issued an order without written dissents denying the appeal.[118] Future scholarship could investigate differences between injunctive relief and declaratory relief for similar cases.

Held v. Montana is important globally, as it shows that climate litigation with youth-based claims can reshape foundational principles of long-standing legal institutions. Notably, the plaintiffs' state constitutional challenge was foundational in the Court's reasoning to allow the declaratory judgments to be heard at trial, and the Court broke from a recent trend of denying standing to plaintiffs suing states for affirmative action perpetuating climate change.[119]

The outcome also reflects the importance of sub-national jurisdictions in reshaping the landscape of climate law broadly, and, more specifically, how the court ruling relates to youth-led cases with rights-based claims. The importance of sub-national jurisdictions should be expected to be a fruitful future area both for legal progress and academic advancement on the subject. As it relates to legal progress, the outcome in *Held v.*

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[115] Montana Supreme Court, 29 September 2023, On appeal from the Montana First Judicial District Court, *Held v. State*, 2020-307.

[116] Skuntz (17 f).

[117] U.S. Court of Appeals for the Ninth Circuit, 17 January 2020, *Juliana v. United States*, 947 F.3d 1159.

[118] U.S. Court of Appeals for the Ninth Circuit, 17 January 2020, *Juliana v. United States*, 947 F.3d 1159 1181 f.

[119] Skuntz, Montana Law Review 1.

Montana demonstrates how a novel case at the sub-national level can present guidance for future cases which similarly involve rights-based claims regarding climate change and climate law.

While this case itself is specific to the U.S. state of Montana, the impact is likely to reach beyond state borders. For example, this outcome could influence the appearance and arguments of similar youth-led, rights-based climate litigation in other states, particularly in which state constitutions include explicit standing for non-adults. Additionally, this case could instigate youths in other countries to introduce similar arguments against actors within their own domestic borders to take greater action to reduce GHG emissions or establish adaptive measures towards climate change if it is found to be lacking and causing harm to potential youth plaintiffs.

Academically, scholars should be increasingly aware of youth-led cases relating to climate law and how they develop in sub-national contexts. The outcome in *Held v. Montana* presents a new geographic context in which favourable outcomes have been achieved. It displays how youth plaintiffs can be successful, particularly when focusing on actions, or inactions, of sub-national agencies and individual actors which contribute significantly to GHG emissions and fossil fuel activities which cause injury to youths, both physically and mentally. While youth-led, rights-based climate cases are also arising at the international level, delving into subsequently appearing sub-national cases will be important for understanding how young people can lead current and future generations in mitigating and adapting to the consequences of climate change.

Overall, lawyers and scholars should view *Held v. Montana* as a milestone case in youth-led, rights-based climate litigation. The outcome shows an instance in which a favourable ruling was reached for youth plaintiffs and is the first in the context of the United States. This case shows how youth plaintiffs can seek to prove injury and receive remedies when government actors fail to ensure that they are responding to changing climate conditions resulting from human activity. This is particularly true at the sub-national level. Considerations of constitutional clauses ensuring that youths explicitly hold standing within a jurisdiction and the ability to connect current harms, both physical and mental, to the actions and/or inactions of defendants is also expected to remain important for youth plaintiffs in future cases. As humans across the globe face and respond to climate change, young people are already, and will likely increasingly, need to respond through legal action to protect wellbeing.

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