



CADWALADER
CLIMATE
Connecting Climate Change and the Law

Montana Residents Challenge State Energy Policy as Unconstitutional

April 4, 2023



By Drew Newman
Associate | Global Litigation



By Timbre Shriver
Associate | Global Litigation

A trial has been scheduled for June 12 in a case involving climate-related constitutional challenges to actions by the State of Montana, its governor, and various state agencies. In [*Held v. Montana*](#), sixteen Montana residents—ranging from ages 2 to 18—claim they “have been and will continue to be harmed by the dangerous impacts of fossil fuels and the climate crisis,” and that the defendants have violated the Montana constitution by fostering and supporting fossil fuel-based energy policies in the state that led to these conditions. According to the complaint, defendants “have created and implemented a long-standing fossil-fuel based state energy system,” which is codified as part of Montana law, “that contributes to dangerous climate disruption in violation of [plaintiffs’] constitutional rights.” The state energy policy **includes** provisions that purportedly promote fossil fuel energy, such as “increas[ing] local oil and gas exploration.” The plaintiffs also challenge an aspect of the state energy policy providing that any environmental review conducted in connection with action taken in furtherance of the policy “may not include a review of actual or potential impacts beyond Montana’s borders. It may not include actual or potential impacts that are regional, national, or global in nature.” According to the complaint, “[t]his has been interpreted to mean that defendants cannot consider the impacts of climate change in their environmental reviews.”

Several constitutional provisions **allegedly were violated** as a result of these actions, including the “inalienable . . . right to a clean and healthful environment,” the obligation of the “[t]he state and each person [to] maintain and improve a clean and healthful environment in Montana for present and future generations,” and Montana’s due process and equal protection provisions. Plaintiffs seek declarations that the energy policy and environmental impact provision are

unconstitutional and various forms of injunctive relief, including requiring defendants to develop environmental remedial plans.

While the court has already ruled that it has no authority to force the defendants to create a remedial plan, the court set a trial date after finding that the plaintiffs have standing to seek declarations that the challenged state policies and the actions taken in furtherance of those policies violate the Montana constitution.

Taking the Temperature: The outcome of the *Held* trial may shape the fate of other constitution-based climate-related challenges, including in [Hawaii](#), [Utah](#), and [Virginia](#).

Overall, as we have reported, climate-focused litigation is on the rise. In Europe, for instance, there have been multiple recent examples of activist investors and NGO's using the courts as a method of exerting pressure on companies. We [reported](#) on an attempt by six NGO's in French courts to suspend an oil pipeline project in Uganda and Tanzania. Three [climate advocacy groups](#) brought a claim in France alleging that a financial institution breached the Duty of Vigilance Act in connection with emissions financing. In the High Court of England and Wales, a non-profit, ClientEarth, has [brought a claim](#) against an oil company for not "properly managing climate risk." And, earlier this year in the U.S., an NGO filed what it called a "[groundbreaking greenwashing complaint](#)" with the Securities and Exchange Commission's Climate and ESG Task Force, asking that it investigate an energy producer for possible violations of the federal securities laws.