TAKING OFF THE "BLINDFOLD": EXPLORING MONTANA'S PUBLIC TRUST DOCTRINE AND THE RIGHT TO A CLEAN AND HEALTHFUL ENVIRONMENT AFTER *HELD V. MONTANA*

by
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As global average temperatures continue to rise, the threat of climate change looms closer. To evade climate catastrophe, greenhouse gas emissions will need to be substantially reduced. Despite climate change's imminent risks, in the United States, both the federal government and states remain resistant to transitioning away from fossil fuel energy sources. To combat this government inaction, some litigants have turned to an ancient doctrine. The public trust doctrine provides that sovereigns must protect natural resources from substantial impairment to ensure the public's right to use those resources.

In Held v. Montana, *youth plaintiffs alleged that the State of Montana violated the public trust doctrine and the Montana Constitution by enacting a state law that prohibited state agencies from considering greenhouse gases or climate change during environmental reviews. This Comment discusses that case and explains how the district court and Montana Supreme Court opinions interpreted the public trust doctrine and Montana Constitution. This Comment concludes that, in invalidating this state law, the Montana courts suggest that the public trust and environmental rights enshrined by constitutional provisions may impose affirmative obligations upon states to take climate action.*

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INTRODUCTION

2024 was, once again, the hottest year on record.[1] Record-breaking global temperatures, however, are now the new normal, as demonstrated by the ten hottest years on record occurring within the last decade.[2] Scientists expect the level of global warming to reach 1.5°C above pre-industrial temperatures within the next decade, even under scenarios with significantly reduced greenhouse gas emissions.[3] This upward trend in global average temperatures is the result of increased greenhouse gas concentrations in the atmosphere from human activities, primarily the combustion of fossil fuels.[4] Climate change effects are already being felt by millions of people across the globe, including extreme temperatures,[5]

[1] *Global Climate Report: Annual 2024*, NAT'L CTRS. FOR ENV'T INFO.: NAT'L OCEANIC & ATMOSPHERIC ASS'N (Jan. 2025), https://www.ncei.noaa.gov/access/monitoring/monthly-report/global/202413#gtemp [https://perma.cc/4N39-KK4Y].

[2] *Global Temperature—Earth Indicator*, NASA, https://climate.nasa.gov/vital-signs/global-temperature/?intent=121 [https://perma.cc/2HTR-EBLG] (last visited Feb. 19, 2026).

[3] Tom Di Liberto, *What's in a Number? The Meaning of the 1.5-C Climate Threshold*, NOAA (Jan. 9, 2024), https://www.climate.gov/news-features/features/whats-number-meaning-15-c-climate-threshold [https://perma.cc/ZS7A-GTVG] (discussing how the 1.5°C threshold is set by the United Nation's Paris Agreements).

[4] Kate Marvel, Wenying Su, Roberto Delgado, Sarah Aarons, Abhishek Chatterjee et al., *Climate Trends*, *in* FIFTH NATIONAL CLIMATE ASSESSMENT 1, 4–6 (Caroline P. Normile ed., 2023), https://toolkit.climate.gov/sites/default/files/2025-07/NCA5_2023_FullReport.pdf (on file with the Lewis & Clark Law Review).

[5] *Indicator: Future Projections of Extreme Heat*, CTRS. FOR DISEASE CONTROL & PREVENTION: NAT'L ENV'T PUB. HEALTH TRACKING NETWORK (Feb. 25, 2025), https://ephtracking.cdc.gov/indicatorPages?selectedContentAreaAbbreviation=15&selectedIndicatorId=97&selectedMeasureId= [https://perma.cc/6P76-JPPF] ("The Intergovernmental Panel on Climate Change (IPCC) projects with 'virtual certainty' (99–100% probability) that climate change will cause more frequent, more intense, and longer heat waves.").

flooding,[6] increased magnitude and frequency of environmental disasters,[7] displacement,[8] and worsening mental health.[9] Scientists warn that without significant emissions reductions, several ecological "tipping points" may be triggered, resulting in catastrophic, long-term shifts in climate.[10]

Despite these climate trends, the second Trump Administration has begun to abandon climate action and maximize fossil fuel extraction.[11] Although the

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[6] *Indicator: Climate Change—Flood Vulnerability*, CTRS. FOR DISEASE CONTROL & PREVENTION: NAT'L ENV'T PUB. HEALTH TRACKING NETWORK (Feb. 25, 2025), https://ephtracking.cdc.gov/indicatorPages?selectedContentAreaAbbreviation=15&selectedIndicatorId=97&selectedMeasureId= (select "Vulnerability & Preparedness: Precipitation & Flooding" from the dropdown menu titled "Indicator") [https://perma.cc/9JEG-7E59] (reporting that "the frequency of heavy precipitation events has already increased for the nation as a whole, and is projected to increase in all U.S. regions").

[7] *See* Marvel et al., *supra* note 4, at 16–21 (explaining how rising global temperatures due to increased greenhouse gas concentrations in the atmosphere will continue to increase the severity, magnitude, and frequency of climate disasters, including heatwaves, droughts, wildfires, heavy precipitation events, flooding, and extreme storms); AM. METEOROLOGICAL SOC'Y, *Global Climate*, *in* STATE OF THE CLIMATE IN 2023, at S12, S22 to S23 (R.J.H. Dunn, J. Blannin, N. Gobron, J.B. Miller & K.M. Willett eds. 2024), https://journals.ametsoc.org/downloadpdf/view/journals/bams/105/8/2024BAMSStateoftheClimate.1.pdf (on file with the Lewis & Clark Law Review) (describing extreme environmental events that occurred in 2023 as a result of extreme global temperatures, including droughts in certain regions and an enlarged wildfire season in Canada).

[8] Elizabeth K. Marino, Keely Maxwell, Emily Eisenhauer, Ariela Zycherman, Candis Callison et al., *Social Systems and Justice*, *in* FIFTH NATIONAL CLIMATE ASSESSMENT, *supra* note 4, at 1, 14 (discussing how climate-change-related disasters, such as hurricanes, have "displaced unprecedented numbers of people").

[9] *Climate Change and Mental Health in the Northwest*, U.S. DEP'T OF AGRIC.: CLIMATE HUBS, https://www.climatehubs.usda.gov/hubs/northwest/topic/climate-change-and-mental-health-northwest [https://perma.cc/V6TA-5U5J] (last visited Feb. 19, 2026) (describing how climate has direct and indirect effects on mental health); *see also* Mary H. Hayden, Paul J. Schramm, Charles B. Beard, Jesse E. Bell, Aaron S. Bernstein et al., *Human Health*, *in* FIFTH NATIONAL CLIMATE ASSESSMENT, *supra* note 4, at 1, 9–10 (describing how climate change and climate disasters effect mental health).

[10] Marvel et al., *supra* note 4, at 31–32 (discussing identified potential tipping points, including collapse of Greenland and West Antarctic ice sheets, and permafrost thawing).

[11] On the first day of his second term in office, President Trump signed several Executive Orders targeting climate action. Exec. Order No. 14162, 90 Fed. Reg. 8455 (Jan. 30, 2025) (withdrawing from the Paris Agreement); Exec. Order No. 14156, 90 Fed. Reg. 8433 (Jan. 29, 2025) (declaring a national emergency to expedite mining projects); Exec. Order No. 14153, 90 Fed. Reg. 8347 (Jan. 29, 2025) (setting policy to maximize development and extraction projects in Alaska); Exec. Order No. 14154, 90 Fed. Reg. 8353 (Jan. 29, 2025) (revoking Biden Administration executive orders related to climate action and initiating the repeal of environmental regulations); Memorandum on Temporary Withdrawal of All Areas on the Outer Continental Shelf from Offshore Wind Leasing and Review of the Federal Government's Leasing and Permitting Practices for Wind Projects, 90 Fed. Reg. 8363 (Jan. 29, 2025) (withdrawing

United States produced more crude oil than any other country on the planet from 2018–2024, President Trump intends to halt renewable energy development and increase fossil fuel projects on federal lands.[12] The federal government has known about the fossil fuel industry's major contributions to global climate change for decades, yet Congress has failed to pass any significant legislation comprehensively addressing climate change.[13] Moreover, due to the Supreme Court's recent reliance on the major questions doctrine[14] and the invocation of the political question doctrine by lower courts,[15] the judiciary has curtailed any considerable efforts made by administrative agencies to reduce fossil fuel emissions.

The failure to address climate change at the federal level[16] has led some litigants to turn their efforts toward the states. Plaintiffs across the United States have filed state actions to hold state governments accountable for their contributions to climate change.[17] This coordinated campaign is referred to as

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leasing for offshore wind energy production in federal waters).

[12] *US Leads Global Oil Production for Sixth Straight Year- EIA*, REUTERS (Mar. 11, 2024, at 16:16 PDT), https://www.reuters.com/markets/commodities/us-leads-global-oil-production-sixth-straight-year-eia-2024-03-11/ [https://perma.cc/SQJ3-AAAA] (reporting that the United States produced "a record breaking average production" of crude oil in 2024); *see supra* note 11 and accompanying text.

[13] *The Causes of Climate Change*, NASA, https://science.nasa.gov/climate-change/causes/#footnote_1 [https://perma.cc/5NGZ-U55W] (last visited Feb. 19, 2026) (describing how combustion of fossil fuels has contributed to increased greenhouse gas concentrations in the atmosphere); Juliana v. United States, 947 F.3d 1159, 1166 (9th Cir. 2020) (discussing how "the federal government has long understood the risks of fossil fuel use and increasing carbon dioxide emissions" dating back as early as the 1960s); *see* Coral Davenport & Lisa Friedman, *Five Decades in the Making: Why It Took Congress So Long to Act on Climate*, N.Y. TIMES (Aug. 7, 2022), https://www.nytimes.com/2022/08/07/climate/senate-climate-law.html [https://perma.cc/AZS7-52HG] (providing a historical background to Congress' longstanding stalemate on climate policy).

[14] *See* Michaela Gines, Note, *Hostility Against the Administrative State: What the New "Major Questions Doctrine" Means for SEC Climate Reform*, 57 U.C. DAVIS L. REV. 3133, 3141–42 (2024) (chronicling the Supreme Court's recent shift in 2021 towards more frequently and aggressively invoking the "major questions doctrine" to restrain administrative agencies' authority); *see, e.g.*, West Virginia v. EPA, 142 S. Ct. 2587, 2601–16 (2022) (staying EPA's implementation of the Clean Power Plan in 2016 under the major question doctrine).

[15] *Juliana*, 947 F.3d at 1165, 1171–72, 1174–75, 1174 n.9 (concluding that federal courts did not have the power under Article III to redress the federal government's actions and inactions that contributed to climate change—even if it did cause concrete harm to plaintiffs—because of separation of powers and the political question doctrine).

[16] *See* MICHAEL C. BLUMM & MARY CHRISTINA WOOD, THE PUBLIC TRUST DOCTRINE IN ENVIRONMENTAL AND NATURAL RESOURCES LAW 377–78 (3d ed. 2021) (critiquing the U.S. government's failure to "respond to the climate threat with the speed and scope" necessary).

[17] *See State Legal Actions*, OUR CHILD.'S TR., https://www.ourchildrenstrust.org/state-legal-actions [https://perma.cc/KS9F-TV7W] (last visited Feb. 20, 2026). Our Children's Trust represents youth plaintiffs in climate change actions pending in six states, including Alaska,

"atmospheric trust litigation."[18] Even so, plaintiffs have encountered roadblocks to using the courts as an enforcement mechanism, including standing requirements and the political question doctrine.[19] However, in *Held v. State*, the plaintiffs—all under the age of 18—found legal footing for atmospheric trust litigation in both the Montana Constitution and the public trust doctrine.[20]

The *Held* plaintiffs sought to remedy Montana's contributions to climate change by challenging a state statute that prohibited state agencies from considering greenhouse gas emissions or climate change during their environmental reviews.[21] The plaintiffs argued that blindfolding agencies in this manner violated the public trust doctrine and Montana's constitutional guarantee of a "clean and healthful environment."[22] Montana is one of several states that have provisions guaranteeing environmental protection in their constitutions.[23]

Montana, Utah, Pennsylvania, Wisconsin, and Florida. Our Children's Trust has previously filed legal actions in every state. *Id.*

[18] Michael C. Blumm & Mary Christina Wood, *"No Ordinary Lawsuit": Climate Change, Due Process, and the Public Trust Doctrine*, 67 AM. U. L. REV. 1, 67 (2017) (discussing the atmospheric trust litigation campaign); BLUMM & WOOD, *supra* note 16, at 378 (overviewing atmospheric trust litigation).

[19] Sam Bookman, *What We Learned in* Held v. Montana, HARV. ENV'T L. REV. (Apr. 7, 2024) https://journals.law.harvard.edu/elr/2024/04/07/what-we-learned-in-held-v-montana/ [https://perma.cc/S5GU-HKF9] (noting that climate change litigants often run into judicial barriers, such as standing, redressability, and the political question doctrine).

[20] Complaint for Declaratory & Injunctive Relief at 2, Held v. State, No. CDV-2020-307 (Mont. Dist. Ct. Mar. 13, 2020).

[21] *Id.* at 3, 35–36 (citing MONT. CODE ANN. § 75-1-201(2)(a) (2023)).

[22] *Id.* at 92, 101; *see* MONT. CONST. art. IX, § 1 ("(1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations. (2) The legislature shall provide for the administration and enforcement of this duty. (3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.").

[23] *See* MONT. CONST. art. II, § 3; *id.* art. IX, §§ 1, 3; LA. CONST. art. IX, § 1 ("The natural resources of the state, including air and water, and the healthful, scenic, historic, and esthetic quality of the environment shall be protected, conserved, and replenished insofar as possible and consistent with the health, safety, and welfare of the people. The legislature shall enact laws to implement this policy."); PA. CONST. art. I, § 27 ("The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people."); HAW. CONST. art. XI, § 9 ("For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State. All public natural resources are held in trust by the State for the benefit of the people."); MICH. CONST.

Although *Held*'s precedential value may be limited to Montana and, perhaps, other states with similar constitutional provisions, the Montana Supreme Court's constitutional interpretation of environmental rights—and, correspondingly, the public trust doctrine—provides support for future atmospheric trust cases.

The district court's ruling in *Held* was a landmark for atmospheric trust litigation because the court acknowledged that Montana's constitutional provisions codified the public trust doctrine[24] and ruled that the trust is implicit in the right to a clean and healthful environment.[25] The district court recognized the public trust as predating the state constitution, and its embodiment in the constitution ensures that the substantive values and procedural obligations set forth by the public trust doctrine can be judicially enforced.[26] The codified public trust doctrine can restrain state legislatures whose actions violate the trust.[27] In affirming the district court's ruling, however, the Montana Supreme Court refrained from addressing the plaintiffs' public trust claims.[28]

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art. IV, § 52 (provides a cause of action "for the protection of the air, water and other natural resources of the state from pollution, impairment and destruction"); MASS. CONST. art. XLIX ("The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose."); N.Y. CONST. art. I, § 19 ("Each person shall have a right to clean air and water, and a healthful environment."); ILL. CONST. art. XI, § 2 ("Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law."); ALASKA CONST. art. VIII (providing constitutional obligations, authority, and limitations for development and conservation of natural resources).

[24] Held v. State (*Held I*), No. CDV-2020-307, 2023 LX 61314, at *117 (Dist. Ct. Mont. Aug. 14, 2023) ("The Public Trust Doctrine is already codified in the Montana Constitution in Art. IX, Sec. 3." (citing MONT. CONST. art. IX, § 3; Mont. Coal. for Stream Access, Inc. v. Curran, 682 P.2d 163 (Mont. 1984))).

[25] *Held I*, 2023 LX 61314, at *118 ("It would be impossible for the Court to find that the MEPA Limitation and Mont Code Ann. § 75-1-201(6)(a)(ii) do not violate Art. II, Sec. 3 and Art. IX, Sec. 1, and then find that the statutes violate the Public Trust Doctrine or the rights to equal protection, dignity, liberty, or health and safety.").

[26] *Held I*, 2023 LX 61314, at *117–18; *see also* Kacy Manahan, Comment, *The Constitutional Public Trust Doctrine*, 49 ENV'T L. 263, 268–69 (2019) (concluding that constitutional provisions that codify the public trust doctrine "ensure enforceability" of the trust because constitutional provisions cannot be overridden by statute and the judiciary can invalidate as unconstitutional those legislative actions which violate the trust).

[27] *See* Mary Christina Wood, *Advancing the Sovereign Trust of Government to Safeguard the Environment for Present and Future Generations (Part 1): Ecological Realism and the Need for a Paradigm Shift*, 39 ENV'T L. 43, 61–67 (2009) (arguing that the Nature's Trust paradigm, drawn from the public trust doctrine, could provide a transformative legal approach necessary to "salvage a future with any measure of comfort and security").

[28] *See* Held v. State (*Held II*), 2024 MT 312, ¶ 14, 419 Mont. 403, 560 P.3d 1235.

This Comment analyzes *Held*'s role in showing how the public trust can be enforced in atmospheric trust litigation when constitutional provisions support it. *Held* suggests that the public trust and environmental rights are inherent, predate state constitutions, and impose affirmative obligations on the state that litigants can judicially enforce.[29] Part I provides a brief background on the origins and framework of the public trust doctrine. Part II discusses Montana's constitution and the doctrine's development within Montana jurisprudence before *Held*. Part III analyzes the *Held* litigation and court rulings, concluding that the Montana Environmental Policy Act (MEPA) limitation violated the constitutional right to a clean and healthful environment. Part IV explains how the district court's recognition that the public trust is codified by and implicit in constitutional provisions supports the judicial enforcement of trust rights and obligations. The Montana Supreme Court's failure to recognize the public trust as such weakens the influence of the district court's interpretation. This Comment concludes that, although the *Held* court's ruling interprets the Montana Constitution, it could support further atmospheric trust litigation in other states with similar constitutional provisions.

I. PUBLIC TRUST DOCTRINE'S FOUNDATIONS

The public trust doctrine is a property law doctrine under which the government must protect natural resources from substantial impairment to ensure the public's right to use and access those resources.[30] Under the doctrine, the government is a trustee, responsible for managing and preserving trust resources for its beneficiaries, the public, and both present and future generations.[31] This trustee relationship is established during the formation of the social contract between the people and their government, which has led many scholars to conclude that the public trust is inherent in sovereignty.[32]

In the United States, each state becomes a trustee and acquires title to trust resources upon its admittance to the Union.[33] Under the Admissions Clause of

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[29] *See id.* ¶¶ 24–25, 27.

[30] Ill. Cent. R.R. Co. v. Illinois, 146 U.S. 387, 435 (1892) (describing the doctrine as establishing that the states have ownership and sovereignty of trust lands and cannot dispose of them if it will "substantial[ly] impair[] . . . the interest of the public"); BLUMM & WOOD, *supra* note 16, at 3.

[31] Wood, *supra* note 27, at 67 (describing the roles of the trustee and beneficiaries within the public trust context).

[32] *See, e.g.*, Mary Christina Wood, *Securing Ecology "Capable of Sustaining Human Life": Invoking the Inherent and Inalienable Public Trust Rights of the People*, 26 U. PA. J. CONST. L. 1212, 1220 (2024).

[33] Arnold v. Mundy, 1 N.J.L. 1, 77–78 (1821) (explaining how ownership of common property and the obligations associated with such property passed from King Charles to the duke

the U.S. Constitution, new states are admitted to the Union on "equal footing with the original states."[34] Under the equal footing doctrine, the federal government's admission of states vests sovereignty and, subsequently, public trust obligations upon all states equally.[35] Given that the public trust doctrine implicitly follows from the equal footing of states, *Pollard v. Hagan* may indicate that the Admissions Clause provides the public trust with a constitutional basis, and therefore the trust may apply to the federal government as well as the states.[36]

The public trust is an ancient doctrine, dating back to at least Roman law from the sixth century A.D.[37] The most commonly cited origin, the Institutes of Justinian, posited that "the air, running water, the sea, and consequently the shores of the sea" are "[t]hings common to mankind by the law of nature."[38] These ideas have been influential; they were incorporated into the Magna Carta and English common law.[39] In English common law, as explained by the U.S.

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of York, and then "vested in *the people* of New Jersey, as the sovereign").

[34] Pollard v. Hagan, 44 U.S. (3 How.) 212, 223 (1845).

[35] *See id.* at 222, 229 (asserting that equal footing conveys new states' ownership of the beds of navigable waters); Michael C. Blumm & Courtney Engel, *Proprietary and Sovereign Public Trust Obligations: From Justinian and Hale to* Lamprey *and Oswego Lake*, 43 VT. L. REV. 1, 11 (2018) ("*Pollard* thus extended *Martin*'s recognition of the [public trust doctrine] nationwide."); BLUMM & WOOD, *supra* note 16, at 77 (discussing the equal footing doctrine).

[36] *See Pollard*, 44 U.S. at 228–29.

[37] BLUMM & WOOD, *supra* note 16, at 14. Although many courts and scholars have identified Roman law, specifically the Institutes of Justinian, as a potential origin of the doctrine, some scholars argue that the doctrine may have even older roots. *Id.* (arguing that issuance of the public trust doctrine in the Institutes of Justinian may be a "re-codification of ancient law" because laws and ideologies from 529–534 A.D.—the time of Roman Emperor Justinian's reign—were often based on prior works); Wood, *supra* note 27, at 64; *see also* Idaho v. Coeur d'Alene Tribe of Idaho, 521 U.S. 261, 284 (1997) ("The principle which underlies the equal footing doctrine and the strong presumption of state ownership is that navigable waters uniquely implicate sovereign interests. The principle arises from ancient doctrines."); Mont. Coal. for Stream Access, Inc. v. Curran, 682 P.2d 163, 167 (Mont. 1984) ("The theory underlying this doctrine can be traced from Roman Law through Magna Carta to present day decisions."); Juliana v. United States, 217 F. Supp. 3d 1224, 1253 (D. Or. 2016) (describing the ancient roots of the public trust doctrine), *rev'd and remanded*, 947 F.3d 1159 (9th Cir. 2020); Michael C. Blumm & Zachary A. Schwartz, *The Public Trust Doctrine Fifty Years After Sax and Some Thoughts on Its Future*, 44 PUB. LAND & RES. L. REV. 1, 6 (2020) (discussing how critics argue that the doctrine may come from even older origins, because the language in the Institutes of Justinian was a codification of earlier Roman law).

[38] THE INSTITUTES OF JUSTINIAN 67 (Thomas Cooper ed., George Harris trans., 2d ed. 1841).

[39] *33*, MAGNA CARTA PROJECT: MAGNA CARTA 1215, https://magnacarta.cmp.uea.ac.uk/read/magna_carta_1215/Clause_33 [https://perma.cc/H6X9-Q9PW] (last visited Mar. 1, 2026) ("All fish-weirs are in future to be entirely removed from the Thames and the Medway, and throughout the whole of England, except on the sea-coast."); Blumm & Engel, *supra* note 35, at 7 (explaining how the Magna Carta of 1215 implemented Justinian principles); *Coeur d'Alene Tribe*

Supreme Court, while the Crown had "both the title and the dominion of the sea, and of rivers and arms of the sea, where the tide ebbs and flows, and of all the lands below high water mark" within the nation's borders, the public had a right to use and access these resources without interference.[40] The natural resources subject to the trust, such as tidal lands and navigable waters, are commonly referred to as trust resources.[41]

English common law carried the public trust doctrine to the United States through the establishment of the states as sovereigns.[42] The public trust doctrine in the United States was first articulated by the New Jersey Supreme Court in 1821.[43] In *Arnold v. Mundy*, the court concluded that a trust and title to trust resources are vested in the sovereign to ensure the public's right to use trust resources.[44] Like under English common law, the *Arnold* court identified water's navigability as a defining characteristic of trust resources.[45]

In the foundational public trust doctrine case *Illinois Central Railroad Co. v. Illinois*, the United States Supreme Court recognized and delineated the contours of the public trust doctrine.[46] *Illinois Central* rejected the Illinois legislature's grant

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of Idaho, 521 U.S. at 284 (discussing the incorporation of the public trust doctrine into the Magna Carta and English common law); Martin v. Waddell's Lessee, 41 U.S. (16 Pet.) 367, 410–13 (1842).

[40] Shively v. Bowlby, 152 U.S. 1, 11–12 (1894) ("[T]he common people of England have regularly a liberty of fishing in the sea or creeks or arms thereof, as a public common of piscary, and may not without injury to their right be restrained of it." (citing MATTHEW HALE, A TREATISE RELATIVE TO THE MARITIME LAW OF ENGLAND, IN THREE PARTS: DE JURE MARIS ET BRACHIORUM EJUSDEM 11 (1787))); *see also Curran*, 682 P.2d at 166–67 (outlining the lands owned by the Crown in trust under English common law).

[41] BLUMM & WOOD, *supra* note 16, at 14–15.

[42] *Id.* at 14–15 (describing how the United States adopted English common law, which in turn retained the public trust); Gregory S. Munro, *The Public Trust Doctrine and the Montana Constitution as Legal Bases for Climate Change Litigation in Montana*, 73 MONT. L. REV. 123, 137 (2012) ("The United States adopted the public trust doctrine from English common law"); *see also Martin*, 41 U.S. (16 Pet.) at 410 (describing how, following the Revolution War and establishing independence from Britain, the 13 original states became sovereigns and consequently held title to the navigable waters and beds underneath them in trust for the public).

[43] Arnold v. Mundy, 1 N.J.L. 1, 76–78 (1821).

[44] *Id.* at 76–77 (concluding that trust resources are "vested in the sovereign, but it is vested in him not for his own use, but for the use of the citizen, that is, for his direct and immediate enjoyment").

[45] *Id.* ("I am of opinion, that . . . the *navigable* rivers in which the tide ebbs and flows, the ports, the bays, the coasts of the sea, including both the water and the land under the water, for the purpose of passing and repassing, navigation, fishing, fowling, sustenance, and all the other uses of the water and its products . . . are common to all the citizens, and that each has a right to use them according to his necessities, subject only to the laws which regulate that use." (emphasis added)).

[46] *See generally* Ill. Cent. R.R. Co. v. Illinois, 146 U.S. 387 (1892) (detailing the public trust

of submerged lands of Lake Michigan in the Chicago harbor to the Illinois Central Railroad because states hold title to lands under navigable waters "in trust for the people of the State."[47] The Court concluded that the public trust doctrine requires states to "preserve [trust resources] for the use of the public."[48] The Court determined that the state could not "abdicate its trust" because the trust is as inherent in sovereignty as police powers.[49]

Although throughout the 19th century trust resources were defined by navigability,[50] *Illinois Central* indicated that the public trust may have a more expansive application by framing trust resources as "property . . . in which the whole people are interested" and for "use of the people at large."[51] After *Illinois Central*, state courts followed the Supreme Court's lead by expanding the scope of the trust in light of societal necessities, such as providing for protections of recreational activities and ecological preservation.[52] Over time, courts applied the

doctrine).

[47] *Id.* at 452.

[48] *Id.* at 453.

[49] *Id.* ("The State can no more abdicate its trust over property in which the whole people are interested, like navigable waters and soils under them, . . . than it can abdicate its police powers."); *id.* at 455 (describing the submerged lands under navigable waters as property "held by the State, by virtue of its sovereignty, in trust for the public"); *see also* Michael C. Blumm, *Salmon, Climate Change, and the Future*, 52 ENV'T L. REP. 10980, 10986 (2022) ("The public trust doctrine is thought by some to be inherent in government sovereignty. Just as generic police powers empower states and local governments to take action promoting the health, safety, and welfare of the public, the public trust implicitly constrains government action that substantially impairs public resources.").

[50] BLUMM & WOOD, *supra* note 16, at 101; Michael C. Blumm & Aurora Paulsen Moses, *The Public Trust as an Antimonopoly Doctrine*, 44 B.C. ENV'T AFFS. L. REV. 1, 9–10 (2017) (discussing how the New Jersey Court in *Arnold v. Mundy* established that the public has right to access the riverbed of a navigable water under the trust).

[51] *Ill. Cent. R.R. Co.*, 146 U.S. at 456–57 (quoting Justice Bradley's discussion of the public uses of trust resources in Stockton v. Baltimore & N.Y. R. Co. (32 F. 9, 19–20 (D.N.J. 1887))).

[52] *See id.* at 456 (describing trust resources as "property, being held by the whole people for purposes in which the whole people are interested"); Blumm & Moses, *supra* note 50, at 22–31 (examining cases where state courts have extended the public trust doctrine to protect natural resources support recreational uses, like boating and bathing, and ecosystem services).

doctrine to waters navigable-in-fact,[53] wildlife,[54] and parklands.[55] In light of the ongoing climate crisis and increasing greenhouse gas concentrations in the atmosphere, some judges and litigators have argued that the atmosphere constitutes a trust resource.[56] So far, such arguments have produced mixed results from various state courts.[57]

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[53] *See, e.g.*, Lamprey v. Metcalf, 53 N.W. 1139, 1144 (Minn. 1893) (developing the pleasure boat test, where a water body is considered navigable—and thus encompassed by the public trust doctrine—if it is "capable of use for boating, even for pleasure"); Parks v. Cooper, 2004 SD 27, ¶ 23, 676 N.W.2d 823, 830 (applying the navigable-in-fact test).

[54] *See, e.g.*, Geer v. Connecticut, 161 U.S. 519, 529 (1896) (establishing that states may regulate game birds to protect the public's right to enjoyment and use, because wild game is subject to common ownership held in trust by the state); Cawsey v. Brickey, 144 P. 938, 939 (Wash. 1914) (holding that state law establishing a game reserve, which prohibits the killing of wildlife within the reserve's boundaries, does not deprive private landowners of property rights, because the game is a common good subject to "absolute governmental control" and title to wildlife is "incident of their sovereignty"); State Dep't of Fisheries v. Gillette, 621 P.2d 764, 767 (Wash. Ct. App. 1980) (asserting that "the state . . . has the fiduciary obligation of any trustee to seek damages for injury to the object of its trust" in holding that the state has standing to seek damages for lost salmon caused by unauthorized construction of a stream bank).

[55] *See, e.g.*, Gould v. Greylock Rsrv. Comm'n, 215 N.E.2d 114, 116, 126 (Mass. 1966) (invalidating a lease of 4,000 acres of Greylock State Reservation because there was "no express grant to the Authority of power to permit use of public lands . . . for . . . a commercial venture for private profit"); Big Sur Props. v. Mott, 62 Cal. App. 3d 99, 103 (Cal. Ct. App. 1976) (concluding that the public trust doctrine applied to land dedicated as a public park through a gift deed).

[56] *See, e.g.*, Juliana v. United States, 217 F. Supp. 3d 1224, 1255 (D. Or. 2016) (describing plaintiffs' argument that the state violated its trustee duties "by failing to protect the atmosphere"), *rev'd and remanded*, 947 F.3d 1159 (9th Cir. 2020); Robinson Twp. v. Commonwealth, 83 A.3d 901, 955 (Pa. 2013) (asserting that "ambient air" is included within the scope of public natural resources, referring to trust resources); Sanders-Reed *ex rel.* Sanders-Reed v. Martinez, 2015-NMCA-063, ¶ 15, 350 P.3d 1221 ("We agree that Article XX, Section 21 of our state constitution recognizes that a public trust duty exists for the protection of New Mexico's natural resources, including the atmosphere, for the benefit of the people of this state.").

[57] *Compare* Chernaik v. Brown, 475 P.3d 68, 81 (Or. 2020) (declining to conclude that atmosphere is a trust resource under Oregon's public trust doctrine because "the interconnectedness of natural resources within Oregon . . . does not mean that all natural resources . . . must be considered public trust resources" and rejecting the test that plaintiffs proposed, in arguing that the atmosphere is a trust resource, because it did not sufficiently provide practical limitations), *and* Aji P. *ex rel.* Piper v. State, 480 P.3d 438, 457 (Wash. Ct. App. 2021) (declining to extend the public trust doctrine to the atmosphere), *with Sanders-Reed*, 2015-NMCA-063, ¶ 15, 350 P.3d 1221 (recognizing that the atmosphere is included as a public trust resource although the public trust common law cause of action was superseded by New Mexico state statute).

II. MONTANA'S PUBLIC TRUST AND CONSTITUTION

Consistent with the proliferation of environmental legal protections throughout the 1970s,[58] Montana, like several other states, enshrined environmental protections in its state constitution in 1972.[59] Montana's constitutional delegates intended to enact "'the strongest environmental protection provision[s] found in any state constitution.'"[60] As a result, the 1972 Montana Constitution adopted several environmental provisions, including article IX and article II, § 3.[61]

Section 3 of article II guarantees "[a]ll persons . . . the right to a clean and healthful environment."[62] Article IX outlines the state's constitutional obligations and duties concerning the state's environment and natural resources.[63] Section 1 requires that "[t]he state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations."[64] Section 3 announced that all waters in Montana are "property of the state for the use of its people."[65] In *Montana Environmental Information Center v. Department*

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[58] *See, e.g.*, Barton H. Thompson, Jr., *Constitutionalizing the Environment: The History and Future of Montana's Environmental Provisions*, 64 MONT. L. REV. 157, 157–58 (2003) (overviewing how the rise of environmentalism in the 1970s spurred environmental constitutional provisions in multiple states, including Montana); Amber Polk, *The Unfulfilled Promise of Environmental Constitutionalism*, 74 HASTINGS L.J. 123, 126–28 (2023) (discussing how the "environmental 'awakening' of the 1960s" led multiple states to constitutionalize environmental protections).

[59] Avery Reavis, *Constitutional Law—Montana Citizens Have a Constitutionally Protected Right to a Clean and Healthful Environment*—Held v. Montana*, No. CDV-2020-307 (Mont. Dist. Aug. 14, 2023)*, 20 J. HEALTH & BIOMEDICAL L. 50, 54 (2023) (discussing the history of "green amendments" and how states, including Hawaii, Illinois, Massachusetts, Pennsylvania, and New York have adopted language, similar to Montana's constitution, that establish a public right to a clean and healthful environment); *see* HAW. CONST. art. XI, § 9 ("Each person has the right to a clean and healthful environment."); ILL. CONST. art. XI, § 2 ("Each person has the right to a healthful environment."); MASS. CONST. art. XLIX ("The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment."); PA. CONST. art. I, § 27 ("The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment."); N.Y. CONST. art. I, § 19 ("Each person shall have a right to clean air and water, and a healthful environment.").

[60] *Held II*, 2024 MT 312, ¶ 23, 419 Mont. 403, 560 P.3d 1235 (quoting Park Cnty. Env't Council v. Mont. Dep't of Env't Quality, 2020 MT 303, ¶ 61, 402 Mont. 168, 477 P.3d 288).

[61] *See* MONTANA CONSTITUTIONAL CONVENTION, Vol. IV at 1209, (Mar. 1, 1972).

[62] MONT. CONST. art. II, § 3.

[63] *Id.* art. IX.

[64] *Id.* art. IX, § 1(1).

[65] *Id.* art. IX, § 3 ("(1) All existing rights to the use of any waters for any useful or beneficial purpose are hereby recognized and confirmed. (2) The use of all water that is now or may hereafter

of Environmental Quality, the Montana Supreme Court instructed "that to give effect to the rights guaranteed by Article II, Section 3 and Article IX, Section 1 . . . they must be read together."[66] Subsequently, in *Park County Environmental Council v. Montana Department of Environmental Quality*, the Montana Supreme Court interpreted article IX, §§ 1 and 3 as being "forward-looking and preventative" and establishing "an affirmative duty . . . to take active steps to realize" the right to a clean and healthful environment from article II, § 3.[67]

Following approval of these constitutional environmental provisions in 1972, Montana courts identified the public trust doctrine as a state obligation originating from statehood and codified by the state constitution.[68] For example, in *Montana Coalition for Stream Access, Inc. v. Curran*, an oil company claimed title to the banks and streambeds of the portions of the Dearborn River that flowed through its land holdings and argued that it had the right to restrict public use and access.[69] The district court concluded the public had a right to use waters and the Dearborn River streambed within the oil company's property up to the high water mark.[70]

Affirming the district court's ruling, the Montana Supreme Court used the federal test for navigability, the log-float test, to conclude that the Dearborn River was a traditionally navigable water.[71] Since the lands in question were submerged under navigable waters, the state, not the oil company, owned both the riverbed and surface waters.[72] According to the court, under the equal footing doctrine, trust resources, including submerged lands under navigable waters, were "owned by the federal government before statehood and [were] transferred to the State of

be appropriated for sale, rent, distribution, or other beneficial use, the right of way over the lands of others for all ditches, drains, flumes, canals, and aqueducts necessarily used in connection therewith, and the sites for reservoirs necessary for collecting and storing water shall be held to be a public use. (3) All surface, underground, flood, and atmospheric waters within the boundaries of the state are the property of the state for the use of its people and are subject to appropriation for beneficial uses as provided by law. (4) The legislature shall provide for the administration, control, and regulation of water rights and shall establish a system of centralized records, in addition to the present system of local records.").

[66] Mont. Env't Info. Ctr. v. Dep't of Env't Quality, 1999 MT 248, ¶ 77, 988 P.2d 1236 (Mont. 1999).

[67] Park Cnty. Env't Council v. Mont. Dep't of Env't Quality, 2020 MT 303, ¶¶ 62–63, 402 Mont. 168, 477 P.3d 288.

[68] Erika A. Doot, *Montana*, *in* THE PUBLIC TRUST DOCTRINE IN FORTY-FIVE STATES, at 465, 466 (Michael C. Blumm ed.) (2014) (describing Montana's public trust jurisprudence as "highly developed" and discussing early applications of the doctrine in Montana).

[69] Mont. Coal. for Stream Access, Inc. v. Curran, 682 P.2d 163, 165 (Mont. 1984).

[70] *Id.*

[71] *Id.* at 166.

[72] *Id.* at 166–67.

Montana upon admission to the Union."[73] As part of the state's sovereignty established by equal footing, the state's title to navigable waters was "burdened by [the] public trust."[74] The court concluded that the navigable waters and streambed at issue were trust resources, and therefore the state had ownership and the public had a right to use those resources.[75]

After identifying the Dearborn River as navigable, the *Curran* court adopted the recreational use test, an expansion of the federal test's conception of navigability used by other states, to determine navigability for purposes of public use of surface waters under state law.[76] Since the river was navigable for recreational use, the court concluded that the company had no right to exclude the public from the surface waters.[77] The court held that "under the public trust doctrine and the 1972 Montana Constitution," the public has a right to use "surface waters that are capable of recreational use."[78] *Curran* thus not only broadened the scope of the trust in Montana by establishing recreational use as a determinative under the state law of navigability, but also recognized the public trust doctrine as an independent authority that predates the state constitution, originating from statehood.[79]

Soon after, in *Montana Coalition for Stream Access v. Hildreth*, the Montana Supreme Court addressed whether the public has a right to use the Beaverhead River for recreation, regardless of streambed ownership.[80] In *Hildreth*, a landowner installed a fence across the Beaverhead River to prevent public access.[81] Unlike *Curran*, which addressed public access to traditionally navigable waters and its streambed, *Hildreth* concerned the public's right to access all waters navigable for recreational use regardless of streambed ownership.[82] The court affirmed that "the public has a right of access [to all waters navigable for recreation] up to the ordinary high water mark without interference" from private

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[73] *Id.* at 166.

[74] *Id.* at 170.

[75] *Id.*

[76] *Id.* at 169 (citing Lamprey v. Metcalf, 53 N.W. 1139, 1143 (Minn. 1893)).

[77] *Id.* at 170 ("If the waters are owned by the State and held in trust for the people by the State, no private party may bar the use of those waters by the people. The Constitution and the public trust doctrine do not permit a private party to interfere with the public's right to recreational use of the surface of the State's waters.").

[78] *Id.* at 171.

[79] *Id.* (holding that "under the public trust doctrine and the 1972 Montana Constitution, any surface waters that are capable of recreational use may be so used by the public without regard to streambed ownership or for nonrecreational purposes").

[80] Mont. Coal. for Stream Access, Inc. v. Hildreth, 684 P.2d 1088, 1093 (Mont. 1984).

[81] *Id.* at 1090.

[82] *Id.* at 1093.

landowners.[83] As in *Curran*, the court based its holding on both the public trust doctrine and the state constitution.[84]

A few years later, in *Galt v. State by and through Department of Fish, Wildlife & Parks*, the Montana Supreme Court identified article IX, § 3 as the basis for the public trust doctrine's codification in the constitution.[85] The *Galt* court described article IX, § 3(3), as declaring state ownership of all waters within state borders "for the benefit of its people" and for the public right to use these waters.[86] Other state courts have likewise identified similar language in their constitutions that establish state ownership over waterways and natural resources as a hook for the public trust doctrine's codification.[87]

In 2002, the Montana Supreme Court concluded, in what is referred to as the "Missouri Drainage Case," that "[u]nder the Constitution *and* the public trust doctrine, the public has an instream, non-diversionary right to the recreational use of the State's navigable surface waters."[88] The court clarified that *Curran* "interpreted not only the 1972 Constitution, but also the public trust doctrine which dates back to Montana's statehood."[89] Thus, the court concluded that the

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[83] *Id.* at 1090.

[84] *Id.* at 1093 ("As we held in *Curran*, . . . under the Public trust Doctrine and the 1972 Montana Constitution, any surface waters that are capable of recreational use may be so used by the public without regard to streambed ownership or navigability for nonrecreational purposes."); *see also* Martin Nie, *The Public Trust Doctrine and Wildlife Management in Montana*, 47 PUB. LAND & RES. L. REV. 35, 62–63 (2024) (explaining the significance of *Curran* and *Hildreth*).

[85] Galt v. State *ex rel* Dep't of Fish, Wildlife & Parks, 731 P.2d 912, 914 (Mont. 1987) ("The public trust is *found* at Article IX, Section 3(3), of the Montana Constitution." (emphasis added)).

[86] *Id.* at 915 ("*All* waters are owned by the State for the use of its people.").

[87] *See* Matthew Thor Kirsch, *Upholding the Public Trust in State Constitutions*, 46 DUKE L.J. 1169, 1184–86 (1997) (discussing states where courts have declared that state constitutional provisions have codified the public trust doctrine under common law); Manahan, *supra* note 26, at 269 (identifying constitutional provisions that assert "state ownership, public navigation rights, or fishery rights" as a predominant mechanism for the public trust doctrine to be codified in state constitutions); Foster v. Wash. Dep't of Ecology, No. 14-2-25295-1, 2015 WL 7721362, at *3 (Wash. Super. Ct. Nov. 19, 2015) (concluding that article XVII of the Washington State Constitution requires the state to protect trust resources under their administrative jurisdiction); Owsichek v. State, 763 P.2d 488, 493 (Alaska 1988) (holding that "common law principles imposing upon the state a public trust duty" were codified by article VIII, § 3 of the Alaska Constitution, which provides that "fish, wildlife, and waters are reserved to the people for common use").

[88] *In re* Adjudication of the Existing Rts. to the Use of All the Water, 2002 MT 216, ¶ 30, 311 Mont. 327, 55 P.3d 396; Munro, *supra* note 42, at 140 (referring to *In re* Adjudication of the Existing Rights to the Use of All the Water, 2002 MT 216, as the "Missouri Drainage Case").

[89] *In re Adjudication of the Existing Rts.*, 2002 MT 216, ¶ 30; Munro, *supra* note 42, at 140 (arguing that the *Curran* decision could establish instream water rights for prior years, because the

public trust doctrine is not a creation of the state constitution because the trust predates the constitution.[90] Instead, the public trust and environmental constitutional provisions function simultaneously as complementary legal authorities providing public rights and state obligations.[91]

In 2011, in *Montana Trout Unlimited v. Beaverhead Water Co.*, the court reiterated that the public trust predates the constitution because "[t]he State of Montana became trustee of the public trust . . . upon achieving statehood."[92] The court concluded that "[u]nder the Montana Constitution and the public trust doctrine, the public owns an instream, non-diversionary right to the recreational use of the State's navigable surface waters."[93] Consequently, Montana's public trust jurisprudence has established that the public trust and the state constitution's environmental provisions are analogous, though the trust exists independently from the constitution, given it predates statehood origin.[94]

III. *HELD V. STATE*

The statute at issue in *Held v. State*, the MEPA enacted in 1971, requires environmental review of state-proposed actions.[95] This procedural requirement aims to provide an "adequate review of state actions . . . to ensure that" the legislature "fulfill[s] constitutional obligations" under article II, § 3, and article IX and that "the public is informed of the anticipated impacts in Montana of potential state actions."[96] However, in 2011, the legislature amended the MEPA (MEPA Limitation) to prohibit state agencies from considering greenhouse gas emissions or the climate change effects within Montana or beyond its borders during agencies' environmental reviews.[97]

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decision was also based on the public trust doctrine, which exists as a discrete authority that predates the state constitution).

[90] *See in re Adjudication of the Existing Rts.*, 2002 MT 216, ¶ 30.

[91] *See id.*

[92] Mont. Trout Unlimited v. Beaverhead Water Co., 2011 MT 151, ¶¶ 29–30, 361 Mont. 77, 255 P.3d 179.

[93] *Id.* ¶ 29.

[94] Munro, *supra* note 42, at 140; *Held II*, 2024 MT 312, ¶ 30, 419 Mont. 403, 560 P.3d 1235.

[95] MONT. CODE ANN. § 75-1-102(1) (2023); *see Held II*, 2024 MT 312, ¶ 56.

[96] MONT. CODE ANN. § 75-1-102(1)(a)–(b). Further, MEPA is intended to "encourage productive and enjoyable harmony between humans and their environment . . . to promote efforts that will prevent, mitigate, or eliminate damage to the environment and biosphere and stimulate the health and welfare of humans, [and] to enrich the understanding of the ecological systems and natural resources important to the state." *Id.* § 75-1-102(2).

[97] *Id.* § 75-1-201(2)(a) (providing that "an environmental review conducted pursuant to subsection (1) may not include an evaluation of greenhouse gas emissions and corresponding impacts to the climate in the state or beyond the state's borders").

A. The District Court's Decision

In March 2020, sixteen youth Montanans, ages ranging from two to eighteen years old at the time, filed suit against the state in the Montana District Court of Lewis and Clark County.[98] The plaintiffs alleged that the state violated their constitutional rights and the public trust doctrine by "creat[ing] and implement[ing] a long-standing fossil-fuel based state energy system that contributes to dangerous climate disruption."[99] Consequently, the plaintiffs challenged the constitutionality of the MEPA Limitation.[100] They sought declaratory judgment and injunctive relief permanently enjoining the state from subjecting the plaintiffs to the MEPA Limitation.[101] They also sought injunctive relief by asking the court to order the state to develop a remedial plan to reduce statewide greenhouse gas emissions.[102]

The district court granted the state's motion to dismiss in part, concluding that plaintiffs had standing to seek declaratory relief, but dismissed plaintiffs' request for a remedial plan.[103] In doing so, the court cited another prominent atmospheric trust suit, *Juliana v. United States*.[104] In *Juliana*, plaintiffs alleged that the federal government violated the Fifth Amendment Due Process Clause and the public trust doctrine, and similarly sought injunctive relief in the form of a remedial plan to "phase out fossil fuel emissions."[105] The Ninth Circuit rejected the plaintiffs' request for a remedial plan because it exceeded the court's authority under the political question doctrine.[106] The district court similarly concluded

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[98] Complaint for Declaratory and Injunctive Relief, *supra* note 20, at 26–33 (naming defendants of the suit, including State of Montana, the Governor, Montana Department of Environmental Quality, Montana Department of Natural Resources and Conservation, Montana Department of Transportation, and Montana Public Services Commission); Erin C. Ferguson, Held v State of Montana*: A Constitutional Rights Turn in Climate Change Litigation?*, 36 J. ENV'T L. 453, 454 (2024).

[99] Complaint for Declaratory and Injunctive Relief, *supra* note 20, at 2 (alleging violations of MONT. CONST. art. II, §§ 3–4, 15, 17; art. IX, §§ 1, 3; and the public trust doctrine).

[100] In addition to the MEPA Limitation, the plaintiffs challenged other provisions from the Montana State Energy Policy Act, which have since been repealed. As such, this Comment will focus solely on the court's discussion and rulings related to the MEPA Limitation.

[101] Complaint for Declaratory and Injunctive Relief, *supra* note 20, at 103.

[102] *Id.*

[103] Order on Motion to Dismiss at 22–23, Held v. State, No. CDV-2020-307 (Dist. Ct. Mont. Aug. 4, 2021).

[104] *Id.* at 20 (citing Juliana v. United States, 947 F.3d 1159, 1171 (9th Cir. 2020)).

[105] *Juliana*, 947 F.3d at 1165.

[106] *Id.* at 1171 (concluding that "it is beyond the power of an Article III court to order, design, supervise, or implement the plaintiffs' requested remedial plan"); *see also* Order on Motion to Dismiss, *supra* note 103, at 20 ("[A]ny effective plan would necessarily require a host of complex policy decision entrusted . . . to the wisdom and discretion of the executive and legislative branches." (quoting *Juliana*, 947 F.3d at 1171–72)).

that the *Held* plaintiffs' request for a remedial plan violated the political question doctrine because its implementation would "require the court to make or evaluate complex policy decision entrusted to the discretion of other governmental branches."[107] Therefore, the court agreed with the state defendants' arguments that "such relief exceeds the court's authority because the ability to enact new legislation lies exclusively with the Montana Legislature."[108] In rejecting the remedial plan, the district court embraced *Juliana*'s approach to the political question doctrine, which conceives judicial oversight of analysis or discretionary decision-making as beyond the authority of the court.[109]

Despite that initial loss, in June 2023, the district court held the first trial in a "youth-led constitutional climate change lawsuit."[110] At trial, the plaintiffs provided extensive testimony from 24 witnesses, including from most of the plaintiffs,[111] renowned climate scientists,[112] physicians,[113] community leaders,[114] and policy experts.[115] On the other hand, the state's response was limited to

[107] Order on Motion to Dismiss, *supra* note 103, at 20–21 (rejecting the plaintiffs' argument that their request for the court to order a remedial plan was similar to relief granted in *Columbia Falls Elementary v. State*, 2005 MT 69, 326 Mont. 304, 109 P.3d 257, because in *Columbia Falls*, "the court did not order the legislative or executive branches to create laws, policies, or regulations to remedy the unconstitutional school funding system," but rather deferred to the legislature).

[108] *Id.* at 19.

[109] *Id.* at 21 (citing *Juliana*, 947 F.3d at 1171).

[110] *See* Amber C. Ellison, Held v. State*, Cause No. CDV-2020-307 (Mont. 1st Dist. Ct. Aug. 14, 2023)*, 47 PUB. LAND & RES. L. REV. 211, 212 (2024); *see Held I*, No. CDV-2020-307, 2023 LX 61314, at *10 (Dist. Ct. Mont. Aug. 14, 2023).

[111] *See* Held v. Montana *Trial Details*, OUR CHILD.'S TR., https://heldvmontana.ourchildrenstrust.org/trial-details/ [https://perma.cc/C8CG-DJRR] (last visited Feb. 23, 2026) (summarizing plaintiffs' trial testimony provided on each day).

[112] *Held I*, 2023 LX 61314, at *21–22, *45–48 (describing factual findings based on testimony from Dr. Steven Running, a university professor of Global Ecology; Dr. Cathy Whicklock, a university professor of earth sciences and ecosystems; Dr. Dan Fagre, a climate change scientist currently researching the climate change effects on the glaciers in Glacier National Park; and Dr. Jack Stanford, a university professor researching aquatic systems).

[113] *Id.* at *32–34 (discussing testimony from Dr. Lori Byron, a pediatrician, and Dr. Lise Van Susteren, a clinical psychiatrist, which described climate change's negative effects on children's physical and psychological health).

[114] *Id.* at *34–35 (describing witness, Michael Durglo, Jr., a member of the Confederated Salish and Kootenai Tribes).

[115] *Id.* at *81–82 (discussing testimony from Anne Hedges, the Co-Director and Director of Policy and Legislative Affairs at the Montana Environmental Information Center, and Peter Erickson, a climate change policy expert, who informed the court of the state's "fossil fuel consumption, extraction, and infrastructure"); *id.* at *101–03 (discussing testimony from Dr. Mark Jacobson, currently a director of a renewable energy solutions organization, which informed the court of research on Montana's energy consumption and systems); *id.* at *108–09 (explaining Ms. Ellingson's, a delegate from the 1972 Montana Constitutional Convention, testimony

providing testimony from three witnesses, including government officials and an economist.[116] In August 2023, the district court struck down the MEPA Limitation and permanently enjoined the state from acting in accordance with the statute, ruling that it was facially unconstitutional because it violated the plaintiffs' constitutional "right to a clean and healthful environment" and the state's obligations under article IX, § 1(1).[117]

Although the district court's interpretation of Montana's public trust doctrine was brief, it was of considerable importance. The court established that, although the public trust predated the constitution, it was codified and implicit in the constitutional right to a clean and healthful environment.[118] First, the court declared that "[t]he Public Trust Doctrine is already codified in the Montana Constitution in Art. XI, Sec. 3."[119] In doing so, Montana joined several other states wherein courts have acknowledged that the public trust doctrine is codified by constitutional provisions.[120]

Second, the court concluded that "[i]t would be impossible for the Court to find that the MEPA Limitation . . . [did] not violate Art. II, Sec. 3 and Art. IX, Sec. 1" without also finding a violation of the public trust doctrine; thus further demonstrating the public trust is implicit in the state constitution.[121] In short, the district court determined that violations of article II, § 3 and article IX, § 1 were also public trust violations.[122] Therefore, a finding of the violation of the right to a clean and healthful environment[123] and the state's obligation to "maintain and improve a clean and healthful environment in Montana for present and future generations"[124] is a violation of the Montana public trust doctrine.[125] This equivalency indicates not only that maintaining and improving a clean and

indicated that the delegates intended for the Constitution adopted to provide "the strongest preventative and anticipatory constitutional environmental provisions possible to protect Montana's air, water, and lands for present and future generations").

[116] Held v. Montana *Trial Details*, *supra* note 111 (listing the state's witnesses, which included "Christopher Dorrington, Director of the Montana Department of Environmental Quality (DEQ); Sonja Nowakowski, Administrator for the Air, Energy, and Mining Division at Montana DEQ; and Dr. Terry Anderson, an economist"); *see Held I*, 2023 LX 61314, at *83 (noting that defendant's expert witness testimony from Dr. Anderson "was not well-supported, contained errors, and was not given weight by the Court").

[117] *Held I*, 2023 LX 61314, at *127.

[118] *See id.* at *117–18.

[119] *Id.* at *117.

[120] *See supra* note 87.

[121] *Held I*, 2023 LX 61314, at *118.

[122] *See id.*

[123] MONT. CONST. art. II, § 3.

[124] *Id.* art. IX, § 1.

[125] *See Held I*, 2023 LX 61314, at *118.

healthful environment are state public trust obligations, but also that public trust obligations are implicit in the state's constitutional guarantees.[126]

As a constitutional interpretation, the district court understood a "clean and healthful environment" to include climate.[127] Citing *Park County*, the court provided that the right to a clean and healthful environment imposes a "forward-looking" and proactive obligation upon the state.[128] Although the district court did not expressly expand the public trust to include the atmosphere as a trust resource, the court's findings and inclusion of climate within the parameters of a constitutionally protected clean and healthful environment seem to require such an expansion. The court determined that "the current atmospheric concentration of [greenhouse gases] and climate change" have "unconstitutionally degraded" the environment, and thus the climate.[129] If the substantial impairment of the atmosphere—via excessive concentration of greenhouse gases—results in unconstitutional degradation of the climate *and* the trust is implicit in this constitutional right, then the atmosphere must be a trust resource. Consequently, under the district court's interpretation, the Montana public trust includes the atmosphere as a trust resource for which the state has a forward-looking, proactive duty to protect against substantial impairment.

B. Affirmation by the Montana Supreme Court

The state appealed the district court's decision to the Montana Supreme Court.[130] In July 2024, the Montana Supreme Court heard oral arguments.[131] None of the parties disputed or referenced the district court's findings concerning

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[126] *See id.*

[127] *Id.* at *124 ("Based on the plain language of the implicated constitutional provisions, the intent of the Framers, and Montana Supreme Court precedent, climate is included in the 'clean and healthful environment' and 'environmental life support systems.'" (quoting MONT. CONST. art. II, § 3; *id.* art. IX, § 1)).

[128] *Id.* at *121–22 ("The right to a clean and healthful environment language in Montana's Constitution is 'forward-looking and preventative language' which 'clearly indicates that Montanans have a right not only to reactive measures after a constitutionally-proscribed environmental harm has occurred, but to be free of its occurrence in the first place.'" (citing Park Cnty. Env't Council v. Mont. Dep't of Env't Quality, 2020 MT 303, ¶¶ 62–63, 402 Mont. 168, 477 P.3d 288)).

[129] *Held I*, 2023 LX 61314, at *124.

[130] Notice of Appeal of Governor Greg Gianforte, Montana Department of Environmental Quality, Montana Department of Natural Resources and Conservation, and Montana Department of Transportation at 1–2, Held v. State (Oct. 2, 2023) (No. DA 23-0575).

[131] MONTANA COURTS, *DA 23-0575 HELD, et al., Plaintiffs and Appellees, v. STATE, et al., Respondents and Appellants.* (YouTube, July 12, 2024), https://www.youtube.com/watch?v=_yfdS-DmXA8 [https://perma.cc/35D2-Y4VY].

the public trust doctrine at oral argument or in their briefing.[132] Instead, the state primarily attacked the plaintiffs' standing, arguing that the plaintiffs' injuries were not redressable.[133] On the other hand, the plaintiffs argued that the MEPA Limitation interfered with the state's constitutional duty to provide for a clean and healthful environment without referencing the public trust.[134]

Unlike the parties, two amicus briefs addressed the state's obligations as a trustee of the public trust. First, the Amici for Environmental and Constitutional Law Professors argued that the Montana Supreme Court should follow the lead of other jurisdictions by recognizing that the right to a clean and healthful environment should include a "life-sustaining climate."[135] In doing so, they cited Hawaii's constitutional "right of conservation and protection" which explicitly provides that "[a]ll public natural resources are held in trust by the State for the benefit of the people."[136] Second, Montana Interfaith Power & Light argued that the Montana government is a trustee, given the "robust public trust doctrine jurisprudence" and the trust's "roots" in article IX, § 3(3) of the state constitution.[137] Montana Interfaith Power & Light concluded that the state, as a trustee, "must administer the Public Trust Doctrine to prevent the widespread environmental damage caused by greenhouse gas emissions" because reducing emissions is required to protect trust resources.[138]

In December 2024, the Montana Supreme Court affirmed the district court's ruling.[139] First, the court affirmed the district court's conclusion of law that "Montana's right to a clean and healthful environment . . . includes a stable climate system."[140] The court concluded that the Framers intended "to provide

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[132] *See id.*

[133] At oral argument, defendants first argued that plaintiffs' injuries were not caused by the challenged statute, their injuries were not redressable, and that plaintiffs should have challenged the MEPA Limitation provision within the context of a specific permit. The State of Montana went on to primarily argue that plaintiffs' injuries were not redressable by the court, because climate change is such a complex, global issue that curbing Montana's emissions alone would not remedy plaintiffs' injuries completely. *See, e.g.*, *id.* at 10:05–17:35.

[134] *Id.* at 31:46–1:01:25.

[135] Brief Amici Curiae of Environmental & Constitutional Law Professors in Support of Plaintiffs/Appellees at 12–13, Held v. State (Mar. 19, 2024) (No. DA 23-0575).

[136] *Id.* at 12–13 (citing HAW. CONST. art. 11, § 1).

[137] Revised Brief of Amicus Curiae Montana Interfaith Power & Light in Support of Plaintiffs-Appellees at 15–16, Held v. State (Mar. 19, 2024) (No. DA 23-0575).

[138] *Id.* at 17.

[139] *Held II*, 2024 MT 312, ¶¶ 73–74, 419 Mont. 403, 560 P.3d 1235. The opinion was written by Chief Justice Mike McGrath. Justice Dirk Sandefur filed a concurrence, and Justice Jim Rice was the sole dissenter. Justice Rice argued that plaintiffs did not have standing because the injury was abstract, the MEPA Limitation was not shown to have been the cause of the specific constitutional harm, and the injury was not redressable. *Id.* ¶¶ 74–102.

[140] *Id.* ¶ 30.

environmental protections which are 'both anticipatory and preventative.'"[141] The court reiterated that "[t]he right to a clean and healthful environment is 'forward-looking and preventative.'"[142]

Second, on standing, the court concluded that the plaintiffs sufficiently demonstrated a "personal stake" in the constitutional right to a clean and healthful environment, given the plaintiffs' undisputed showing that "climate change is causing serious and irreversible harms to the environment in Montana" at trial.[143] Further, MEPA's provision requiring that state actions must be adequate in that "'environmental attributes are *fully considered* . . . to fulfill constitutional obligations' and 'the public is informed of the anticipated impacts in Montana of potential state actions'" contributed to plaintiffs' personal stake.[144] The court determined that even though the plaintiffs' injury to their constitutional right to a clean and healthful environment was "widely shared," their injuries were sufficiently concrete.[145]

Rejecting the state's redressability arguments, the court announced that redressability can be satisfied if the injury is only partially redressed.[146] The court emphasized that the injury redressed was the plaintiffs' constitutional injury, rather than their injuries caused by climate change.[147] Given that "climate change is a serious threat to the constitutional guarantee of a clean and healthful environment," the MEPA Limitation infringed upon this right and "the State's affirmative duty to take active steps to realize this right."[148]

Finally, the court concluded that the MEPA Limitation was unconstitutional because (1) it implicated the right to a clean and healthful environment; and (2) it was not narrowly tailored to a "compelling" government interest.[149] The MEPA is a "forward-looking mechanism[]" to fulfill "its constitutional mandate to

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[141] *Id.* ¶ 25 (quoting Mont. Env't Info. Ctr. v. Dep't of Env't Quality, 1999 MT 248, ¶ 77, 988 P.2d 1236 (Mont. 1999)).

[142] *Id.* ¶ 28 (quoting Park Cnty. Env't Council v. Mont. Dep't of Env't Quality, 2020 MT 303, ¶ 62, 402 Mont. 168, 477 P.3d 288).

[143] *Id.* ¶¶ 36–37.

[144] *Id.* ¶ 37 (quoting MONT. CODE ANN. § 75-1-102 (2023)).

[145] *Id.* ¶ 40.

[146] *Id.* ¶ 48.

[147] *Id.* ¶ 52 ("Declaring *that* law unconstitutional and enjoining the State from acting in accordance with it will effectively alleviate *that* constitutional injury—that the State is acting in opposition to its affirmative constitutional duty through the MEPA Limitation—even if other statutes not at issue here also cause constitutional injuries.").

[148] *Id.* ¶ 36.

[149] *Id.* ¶¶ 67–68 (concluding that the MEPA Limitation "arbitrarily excludes all activities from review of cumulative or secondary impacts from [greenhouse gas] emissions without regard to the nature or volume of the emissions").

prevent environmental harms."[150] Thus, the MEPA Limitation implicated the right to a clean and healthful environment because prohibiting consideration of greenhouse gases and climate change hinders the state's ability to prevent environmental harms.[151] The MEPA Limitation was not narrowly tailored because it "arbitrarily" and broadly prohibited consideration of the effects of greenhouse gas emissions and climate change on the environment.[152] The court, therefore, affirmed the district court's order, declared the MEPA Limitation unconstitutional and permanently enjoined the state from implementing the law.[153]

In affirming the district court's ruling, however, the Montana Supreme Court failed to address the public trust doctrine directly.[154] Although the state appealed the district court's order and findings in favor of the plaintiffs in its entirety, the court found it unnecessary to address the trust as codified or implicit in the constitution, as the district court provided.[155] Instead, the Supreme Court focused solely on constitutionality.[156]

IV. *HELD*'S IMPACT ON THE MONTANA PUBLIC TRUST DOCTRINE AND ATMOSPHERIC TRUST LITIGATION

Given the Montana Supreme Court's lack of commentary on the plaintiffs' public trust claims, its opinion predominantly functions as a state constitutional interpretation. But the district court's conclusions regarding the public trust doctrine still inform how the public trust functions relative to the constitutional right to a clean and healthful environment. Several states have similar constitutional language establishing a right to a clean and healthful environment.[157] Although the *Held* decision is not binding upon other states, its influence may still extend well beyond Montana's borders to states with similar constitutional language.

This Part examines how similarities between the public trust and the constitutional right to a clean and healthful environment support the district court's conclusion that Montana's public trust is codified and implicit in its constitution. Recognition of the trust's codification and implicit nature

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[150] *Id.* ¶ 59.

[151] *Id.* ¶ 60.

[152] *Id.* ¶ 68.

[153] *Id.* ¶¶ 73–74.

[154] *See generally id.* (deciding plaintiffs' claims as a matter of constitutional interpretation using analysis of the amendments' legislative history rather than any exploration of common law background principles).

[155] *See id.* ¶¶ 14–25.

[156] *Id.* ¶¶ 21, 25, 30.

[157] *See* sources cited *supra* note 23.

strengthens the ability to judicially enforce Montana's—and other states'—affirmative trust obligations.

A. The Public Trust Doctrine and the Constitutional Right to a Clean and Healthful Environment

As discussed, the public trust doctrine is not a creation of these state constitutional provisions. Instead, according to Professor Wood, the public trust doctrine "articulate[s] the pre-existing, inherent property rights held by the public and reserved by the people when forming their government."[158] Similarly, although adopted as part of 1972 amendments to the constitution, the right to a clean and healthful environment was not actually created by the constitution.[159] On the contrary, the Montana Constitution identifies the right to a clean and healthful environment as one of all citizens' "inalienable rights."[160] The Montana Supreme Court decision in *Curran* articulated the long-standing understanding that the public trust is also inalienable.[161] Both the public trust and the environmental right to a clean and healthful environment are foundational rights implicitly reserved by the people as a part of the social contract in forming a government.[162] Therefore, as inherent, inalienable rights, trust principles and the guarantee of a clean and healthful environment are not contingent upon express constitutional provisions or state law.

In addition to their inherent nature, both public trust and environmental rights are positive rights.[163] As positive rights, they confer a legal entitlement upon

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[158] Mary Christina Wood & Dan Galpern, *Atmospheric Recovery Litigation: Making the Fossil Fuel Industry Pay to Restore a Viable Climate System*, 45 ENV'T L. 259, 276 (2015) (describing how the environmental provisions that codify the public trust doctrine "do not create a new constitutional right" since the public trust doctrine "is an attribute of sovereignty embedded in the governmental structure itself, the existence of a constitutional trust does not depend on the formulation of express constitutional public trust provisions" (footnote omitted)).

[159] Wood, *supra* note 32, at 1221 (arguing that "all of the express constitutional protections simply iterate what is a pre-existing right" rather than creating the right).

[160] MONT. CONST. art. II, § 3 ("All persons are born free and have certain inalienable rights.").

[161] *See* Mont. Coal. for Stream Access, Inc. v. Curran, 682 P.2d 163, 168 (Mont. 1984) ("The control of the State for the purposes of the trust can never be lost." (quoting Ill. Cent. R.R. Co. v. Illinois, 146 U.S. 387, 452–53 (1892) (explaining that "[t]he State can no more abdicate its trust over property in which the whole people are interested . . . than it can abdicate its police powers"))).

[162] Mary Christina Wood, *The Oregon Forest Trust: An Ecological Endowment for Posterity*, 101 OR. L. REV. 515, 579 (2023) ("[T]he logic animating the trust is that citizens would never give their government power to impair resources crucial to their survival and welfare, so they implicitly reserve unto themselves common property rights to these vital resources.").

[163] *See* Erin Ryan, *Public Trust Principles and Environmental Rights: The Hidden Duality of Climate Advocacy and the Atmospheric Trust*, 49 HARV. ENV'T L. REV. 225, 252–53 (2025).

citizens, which the government has an affirmative duty to provide.[164] Facially, *Held* recognized a restraint on the state, as indicated by the court's striking down of the MEPA Limitation.[165] However, the court conversely implied that the state is required to consider greenhouse gases within the MEPA analysis because this "analysis is necessary to inform the State's affirmative duty to take active steps to realize the right to a clean and healthful environment."[166] Thus, considering the effect of greenhouse gases may function both as an affirmative duty in its own right, and also as a prerequisite to the state's fulfillment of its affirmative duties imposed by the right to a clean and healthful environment.[167]

Held does not indicate what further action may be required of states to fulfill the affirmative duties imposed upon by the right to a clean and healthful environment, aside from considering the effect of greenhouse gas emissions.[168] The court's narrow inferences may be attributed to its limited scope, in that the plaintiffs' injury is a constitutional one.[169] The court determined that providing legal relief that would "effectively stop or reverse climate change" or address "other statutes not at issue here [that] also cause constitutional injuries" was not required to redress plaintiffs' constitutional injury.[170] Therefore, the scope of the legal relief may have inhibited the court from examining what other affirmative duties are required to realize the right to a clean and healthful environment. In light of the political question doctrine's invocation in dismissing the plaintiffs' request for relief in the form of a remedial plan, it is possible that the court may consider defining these duties any further to be a "complex policy decision[] entrusted . . . to the wisdom and discretion of the executive and legislative branches."[171] It could also be possible that reviewing courts could approve lower courts' directives to take affirmative action that do not require more drastic remedial plans.[172]

The Montana Supreme Court's reluctance to acknowledge that the public trust has been codified and is implicit to the state's constitutional environmental guarantees was disappointing. Direct affirmation would have strengthened the

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[164] *Id.* at 253.

[165] *Held II*, 2024 MT 312, ¶ 73, 419 Mont. 403, 560 P.3d 1235.

[166] *Id.* ¶ 44 (concluding that the plaintiffs have standing because they had shown that the MEPA Limitation "impact[ed] their right to a clean and healthful environment" in that it "blindfolded the State" and hindered the state's ability to fulfill its "affirmative duty").

[167] *See id.*

[168] *See id.* ¶ 29.

[169] *Id.* ¶ 68 ("We decide only that the Constitution does not permit the Legislature to prohibit environmental reviews from evaluating [greenhouse gas] emissions.").

[170] *Id.* ¶ 52.

[171] Juliana v. United States, 947 F.3d 1159, 1171 (9th Cir. 2020); *see also Held II*, 2024 MT 312, ¶ 45 (distinguishing relief sought in this case from that in *Juliana*).

[172] Paul Blakeslee, *"Certain Remedy Afforded for Every Wrong": State Constitutional Right-to-Remedy Provisions as a Vehicle for Climate Litigation*, 104 B.U. L. REV. 1829, 1839–40 (2024).

court's interpretation that the constitution imposes an active, affirmative duty upon the state. The public trust doctrine has long been understood as imposing an affirmative duty in that states must *prevent* substantial impairment of trust resources.[173] Prevention of substantial impairment may impose restraints on state action, as in *Illinois Central*, where the trust prohibited the state from conveying title, or demand affirmative action to consider the effects of greenhouse gases.[174] The fulfillment of the state's constitutional and trust duties are corollaries. If trust resources are substantially impaired, the environment cannot be clean and healthful. On the other hand, if the environment is not clean or healthful, trust resources have necessarily been substantially impaired. The district court articulated this dependency by recognizing that the public trust is implicit in the right to a clean and healthful environment.[175] This constitutional interpretation is consistent with Montana's historic public trust jurisprudence, which recognized the trust as an inherent aspect of sovereignty.[176] Thus, the district court recognized that the public trust is implicit in the right to a clean and healthful environment, an inherent right of the people upon forming government.[177]

Instead of recognizing this implicit relationship, the Montana Supreme Court grounded its conclusion that the constitution imposes affirmative duties upon more recent cases' constitutional interpretations,[178] which predominantly relied upon textual and legislative history analysis.[179] The court's silence left the district court's indication that public trust doctrine includes the atmosphere unconfirmed, and may leave ambiguous that the right to a clean and healthful environment imposes a state duty not only to avoid taking damaging actions but also to require state action to prevent substantial impairment of the environment, climate, and atmosphere.

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[173] Ill. Cent. R.R. Co. v. Illinois, 146 U.S. 387, 453 (1892) (requiring the state to "preserve" navigable water for public use).

[174] *See id.* at 452–53.

[175] *Held I*, No. CDV-2020-307, 2023 LX 61314, at *118 (Dist. Ct. Mont. Aug. 14, 2023).

[176] *See supra* Part II.

[177] Wood, *supra* note 32, at 1225 (concluding that the public trust doctrine is an inherent right that is reserved "when the people give government power").

[178] *Held II*, 2024 MT 312, ¶¶ 23, 28, 30, 419 Mont. 403, 560 P.3d 1235 (citing Park Cnty. Env't Council v. Mont. Dep't of Env't Quality, 2020 MT 303, ¶¶ 61–63, 402 Mont. 168, 477 P.3d 288) (acknowledging that the court "ha[s] previously addressed these constitutional provisions" and determined that the right to a clean and healthful environment is "anticipatory and preventative").

[179] *Park Cnty. Env't Council*, 2020 MT 303, ¶¶ 61–63 (concluding that article IX, § 1 provides an "affirmative duty" to ensure the right to a clean and healthful environment, based on the delegates' intentions—provided by legislative history analysis from *Montana Environmental Information Center*—and the "constitutional text's unambiguous reliance on preventive measures" (citing Mont. Env't Info. Ctr. v. Dep't of Env't Quality, 1999 MT 248, ¶¶ 63–85, 988 P.2d 1236 (Mont. 1999)).

Held's rejection of the MEPA Limitation suggests that states with similar constitutional language may be prohibited from enacting similar laws.[180] Since the right to a clean and healthful environment imposes affirmative duties, similar to the public trust doctrine, states with similar constitutional language may be required to take action by considering potential state action's greenhouse gas emissions and climate change effects. But it remains unclear what other affirmative actions will be required of states to fully realize public trust and environmental rights. The Montana Supreme Court's unwillingness to recognize the public trust as codified and implicit to the constitution reduces *Held*'s practicality for future litigants raising constitutional claims.[181] But given that public trust and environmental rights are inalienable, inherent, and "secured rather than bestowed by the Constitution," future litigants may continue to assert that Montana and other states must take affirmative action that prevents the substantial impairment of trust resources.[182]

B. The Effect of Codifying Public Trust and Environmental Rights

Although the Montana Supreme Court did not recognize the district court's assertion that the public trust has been codified by the Montana State Constitution, it did not challenge this conclusion, suggesting acquiescence.[183] By limiting its discussion to constitutionality, the court resolved all of plaintiffs' claims based on what was facially required. Acquiescence, however, is far from wholehearted endorsement.

The court's silence on this issue recalls the historic judicial reluctance to adequately address environmental harms or take up a more active role in enforcing public trust state obligations.[184] Judicial recognition that public trust rights are

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[180] Amber Polk, *Montana Kids Win Historic Climate Lawsuit—Here's Why It Could Set a Powerful Precedent*, THE CONVERSATION, (Aug. 15, 2023, at 08:35 EDT), https://theconversation.com/montana-kids-win-historic-climate-lawsuit-heres-why-it-could-set-a-powerful-precedent-207907 [https://perma.cc/DRF3-7YFR] (arguing that *Held* suggests that states with green amendments cannot implement state laws similar to the MEPA Limitation).

[181] Blakeslee, *supra* note 172, at 1841–42 ("Despite the *Held* model's considerable innovations, the scarcity of state constitutional clean environment guarantees requires extending the model under other legal claims. Even among the six states with constitutional environmental guarantees, the *Held* strategy does not appear to be universally applicable, given the wide range of language making up these provisions.").

[182] Robinson Twp. v. Commonwealth, 83 A.3d 901, 948 n.36 (Pa. 2013) (citing Driscoll v. Corbett, 69 A.3d 197, 208 (Pa. 2013)).

[183] *Contrast Held I*, No. CDV-2020-307, 2023 LX 61314, at *117–18 (Dist. Ct. Mont. Aug. 14, 2023) (determining the MEPA Limitation violated the Montana Constitution *and* the public trust doctrine), *with Held II*, 2024 MT 312, ¶ 73 (affirming that the MEPA Limitation violated the Montana Constitution, but remaining silent as to the public trust doctrine).

[184] Mary Christina Wood, *"On the Eve of Destruction": Courts Confronting the Climate*

codified by state constitutions ensures that public trust obligations can be judicially enforced and puts both the public and lawmakers on notice of their rights and obligations.[185] Professor Wood has argued that "[t]he sheer urgency of [the] climate crisis magnifies this important judicial role."[186]

Recognition of the public trust's codification in state constitutions should, according to one commentator, "ensure [judicial] enforceability, because the legislature cannot easily displace" trust rights and obligations.[187] Constitutions and statutes implement restrictions upon state governments.[188] Similarly, the public trust doctrine restricts the state from substantially impairing trust resources.[189] Consequently, if a state legislature takes action that infringes upon the public trust codified by constitutional provision, courts will apply strict scrutiny.[190] *Held* exemplifies how the public trust restraints on states can be

Emergency, 97 IND. L.J. 239, 254–57 (2022) (discussing how the judiciary has historically refrained from leveraging its power to address environmental harm and describing how in response to atmospheric trust litigation cases the judiciary "[i]nvok[ed] a variety of procedural grounds, including the political question doctrine, standing, deference, and displacement, [resulting in] nearly all courts avoid[ing] involvement in the climate crisis"); Alfred T. Goodwin, *A Wake-Up Call For Judges*, 2015 WIS. L. REV. 785, 785 (2015) (arguing that judges have failed to enforce states' trust obligations, leading to a "wholesale failure of the legal system to protect humanity from the collapse of finite natural resources"); Juliana v. United States, 947 F.3d 1159, 1175 (9th Cir. 2020) (dismissing the case for lack of standing under the political questions doctrine, despite acknowledging that climate change is an existential threat); Aji P. v. State, 497 P.3d 350, 351 (Wash. 2021) (Chief Justice González, dissenting) ("This case is an opportunity to decide whether Washington's youth have a right to a stable climate system that sustains human life and liberty. We recite that we believe the children are our future, but we continue actions that could leave them a world with an environment on the brink of ruin and no mechanism to assert their rights or the rights of the natural world. This is our legacy to them described in the self-congratulatory words of judicial restraint. Today, the court declined the important responsibility to seriously examine their claims.").

[185] Mary Christina Wood & Charles W. Woodward, IV, *Atmospheric Trust Litigation and the Constitutional Right to a Healthy Climate System: Judicial Recognition at Last*, 6 WASH. J. ENV'T L. & POL'Y 634, 656–57 (2016) (arguing that judicial enforcement of the public trust is "essential to the balance of power" between the interests of the state, trustee, and the public, beneficiary); Wood & Galpern, *supra* note 158, at 276 (arguing that, although the Philippines Supreme Court understood environmental rights as inherent and therefore did not need to be written down to exist, the court declared the rights' inalienable existence to make it "clear").

[186] Wood & Woodward, *supra* note 185, at 657.

[187] Manahan, *supra* note 26, at 268–69.

[188] Wendy Kerner, *Marking Environmental Wrongs Environmental Rights: A Constitutional Approach*, 41 STAN. ENV'T L.J. 83, 88 (2022) ("Constitutions do not grant powers to state and local governments but instead restrict their powers, limiting governmental overreach.").

[189] Ill. Cent. R.R. Co. v. Illinois, 146 U.S. 387, 453 (1892) (discussing obligation to prevent "substantial impairment").

[190] Kerner, *supra* note 188, at 88 (discussing how courts apply strict scrutiny when analyzing citizens' claims of government infringement upon their environmental rights provided by state

successfully enforced through strict scrutiny analysis invoked by the implication of a constitutional right, despite a court's lack of direct recognition that the public trust doctrine has been formally codified.[191]

Since the 1980s, the Montana Supreme Court has repeatedly recognized the public trust as an authority predating the state constitution, and that has since been codified.[192] The district court reiterated this assertion in finding that the public trust is implicit in the constitutional guarantee of the right to a clean and healthful environment.[193] The district court observed that case law had established that the trust had been codified, explaining that "[t]he Public Trust Doctrine is *already* codified."[194] The Montana Supreme Court's absence of further commentary may suggest that it considered the public trust doctrine's codification to be a settled matter. But, again, suggestion and acquiescence do not provide certainty. Although *Held* may not wholeheartedly answer Professor Wood's call to secure the judicial enforceability of trust obligations by affirming the trust's codification, the court's striking down the MEPA Limitation effectuated the public trust principle that state has a duty to prevent substantial impairment.[195]

CONCLUSION

In *Held*, the district court's analysis of the public trust doctrine and constitutional interpretation of Montana's environmental provisions concluded that the doctrine (1) has been codified by constitutional language and (2) is implicit in the right to a clean and healthful environment.[196] As a doctrine with ancient roots, the public trust has long established that to preserve natural resources for future generations, the government is obligated to prevent substantial impairment of these resources.[197] Constitutional provisions that codify the public trust doctrine and inalienable environmental rights ensure that trust principles can be judicially enforced and act as a check on state legislatures.

The Montana courts' historic and continued recognition that the public trust originates from statehood illustrates how trust rights and obligations are inherent

constitutions); *Held II*, 2024 MT 312, ¶ 57, 419 Mont. 403, 560 P.3d 1235 (applying strict scrutiny to the MEPA Limitation because the law "implicates" a state constitutional right).

[191] *See Held II*, 2024 MT 312, ¶ 57.

[192] *See, e.g.*, Mont. Coal. for Stream Access, Inc. v. Curran, 682 P.2d 163, 167 (Mont. 1984); Mont. Coal. for Stream Access, Inc. v. Hildreth, 684 P.2d 1088, 1093 (Mont. 1984); Galt v. State *ex rel* Dep't of Fish, Wildlife & Parks, 731 P.2d 912, 914 (Mont. 1987).

[193] *Held I*, No. CDV-2020-307, 2023 LX 61314, at *118 (Dist. Ct. Mont. Aug. 14, 2023).

[194] *Id.* at *117 (emphasis added).

[195] *See supra* notes 183–91 and accompanying text.

[196] *Held I*, 2023 LX 61314, at *117–18.

[197] *See* Ill. Cent. R.R. Co. v. Illinois, 146 U.S. 387, 453 (1892).

in sovereignty.[198] Likewise, environmental constitutional rights mirror the public trust. In *Held*, the district court illustrated these parallels by recognizing that the right to a clean and healthful environment similarly provides for enforceable rights and affirmative obligations.[199]

By striking down the MEPA Limitation, the Montana Supreme Court not only restrained the state, but also inferred that considering the effects of greenhouse gas emissions is a required affirmative obligation.[200] The Montana Supreme Court's refusal to acknowledge the district court's interpretation of the public trust failed to incorporate long-standing public trust principles into the constitutional interpretation of the right to a clean and healthful environment with certainty. As a result, it remains unclear whether the Montana public trust includes the atmosphere, as the district court suggested, and what further actions may be required to fulfill the state's affirmative obligations under the constitution.

Nevertheless, the *Held* plaintiffs' success at the state level, striking down a law that contributed to the climate crisis, is a step towards realizing citizens' inherent rights and the government's corresponding obligations. Despite being on the precipice of environmental catastrophe, the U.S. government has demonstrated an unwillingness to take action.[201] Contrary to the rejection of climate realities occurring at the national level, *Held* serves as a wake-up call for states to take off the blindfold and reckon with the current and impending environmental harms.[202]

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[198] *See id.*

[199] *Held I*, 2023 LX 61314, at *121–22; *see Held II*, 2024 MT 312, ¶ 49, 419 Mont. 403, 560 P.3d 1235 ("Plaintiffs may enforce their constitutional right to a clean and healthful environment against the State, which owes them that affirmative duty.").

[200] *Held II*, 2024 MT 312, ¶¶ 44, 68.

[201] Robert J. Brullee, *Denialism: Organized Opposition to Climate Change Action in the United States*, *in* HANDBOOK OF ENVIRONMENTAL POLICY, at 328, 328, 337–38 (David Konisky ed., 2020).

[202] Goodwin, *supra* note 184, at 785–88.