In the Supreme Court of the State of Utah

NATALIE R., a minor, by and through her guardian, DANIELLE ROUSSEL; et al. *Plaintiffs-Appellants,* vs. STATE OF UTAH; et al., *Defendants-Appellees.*	No. 20230022-SC On Appeal from the Third Judicial District Court, Salt Lake County, Honorable Robert Faust No. 220901658

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CURRENT AND FORMER PARTIES

Appellants ("Youth Plaintiffs" or "Youth")

Natalie R., a minor, by and through her guardian, Danielle Roussel; Sedona M., a minor, by and through her guardian, Creed Murdock; Otis W., a minor, by and through his guardian, Paul Wickelson; Lydia M., a minor, by and through her guardian, Heather May; Lola Maldonado; Emi S., a minor, by and through her guardian, David Garbett; Dallin R., a minor, by and through his guardian, Kyle Rima

> Represented by Andrew L. Welle of Our Children's Trust; Andrew G. Deiss, John Robinson Jr., and Corey D. Riley of Deiss Law, PC

Appellees ("Defendants")

The State of Utah; Spencer Cox, Governor of the State of Utah, in his official capacity; the Department of Natural Resources, Office of Energy Development; the Energy Advisor and Executive Director of the Department of Natural Resources, Office of Energy Development, in his official capacity; the Department of Natural Resources, Board of Oil, Gas, and Mining; the Department of Natural Resources, Division of Oil, Gas, and Mining; and John R. Baza, Director of Department of Natural Resources, Division of Oil, Gas, and Mining, in his official capacity

> Represented by Erin T. Middleton, David N. Wolf, Michael Begley, and Trevor Gruwell of the Office of the Utah Attorney General

Parties Below Not Parties to the Appeal

Thom Carter, Energy Advisor and Executive Director of the Department of Natural Resources, Office of Energy Development, in his official capacity. Mr. Carter has been succeeded in his office by Gregory Todd.

TABLE OF CONTENTS

ADDENDA

A. Complaint for Declaratory Relief R.1-94

B. Constitutional Provisions

Utah Const. art. I, § 1
Utah Const. art. I, § 7
Utah Const. art. I, § 11
Utah Const. art. I, § 27
Utah Const. art. V, § 1
Utah Const. art. VI, § 1
Utah Const. art. VIII, § 1
Utah Const. art. VIII, § 2
Utah Const. art. VIII, § 5

C. Statutes

Utah Code § 40-6-1
Utah Code § 40-6-13
Utah Code § 40-10-1(1)
Utah Code § 40-10-17(2)(a)
Utah Code § 79-6-301(1)(b)(i)

D. Memorandum Decision and Order of the District Court, November 9, 2022 R.408-19

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes

Rules

Other Authorities

INTRODUCTION

As youth, Plaintiffs are uniquely vulnerable to and already experiencing serious harms to their health, safety, and opportunity for longevity from the hazardous air quality and dangerous effects of climate change caused by the development and use of Utah's fossil fuels. With full knowledge of these profound dangers to children, the State has enacted laws that direct Utah's executive branch to maximize, promote, and systematically authorize fossil fuel development, thereby causing and contributing to Utah's harmful air and climate conditions, substantially endangering the Youth's health and safety, and taking years off their lives. Utah Code §§ 79-6-301(1)(b)(i); 40-10-1(1); 40-10-17(2)(a); 40-6-1; 40-6-13. Seeking declaratory relief, the Youth challenge these statutory provisions, and Defendants' implementing conduct, as violating their fundamental rights to life and to freedom from substantial endangerment of their health and safety under article I, sections 1 and 7 of Utah's Constitution.

The district court dismissed the Youth's claims as nonjusticiable, rejected the availability of declaratory relief to redress constitutional violations, and invented an exemption for fossil fuels from the explicit restrictions and protection of rights afforded by Utah's Constitution. This was error.

Utah's Constitution tasks the judiciary with the duty to resolve claims that legislative and executive actions violate the restrictions imposed and rights

afforded by the state charter. Utah's Constitution provides no exception to judicial review, nor to the applicability of Utah's Declaration of Rights, for laws and state conduct involving fossil fuels. This Court should reverse the district court and remand so the Youth may have the opportunity afforded by their constitution to present proof of the serious constitutional injuries being inflicted by their own government.

STATEMENT OF THE ISSUES

1. Is the constitutionality of statutes governing fossil fuel development justiciable under Utah's Constitution?

2. Would a declaration of the unconstitutionality of the challenged statutory provisions be likely to redress the Youths' injuries?

3. Is there no set of possible circumstances under which fossil fuel laws can conceivably infringe the rights to life, liberty, and property under article I, sections 1 and 7?

4. Are the Youth's factual allegations sufficient to state claims for violation of their rights to life and liberty under Utah's Constitution such that they should be afforded an opportunity to present evidence in support of their claims?

Preservation: These issues were preserved through Plaintiffs' "Memorandum Opposing Motion to Dismiss**."** R.188-223.

Standard of Review: This Court reviews the grant of a motion to dismiss "for correctness, granting no deference to the decision of the district court." *Castro v. Lemus*, 2019 UT 71, ¶11, 456 P.3d 750. Questions of "justiciability" and the meaning

of terms "used in the Utah Constitution" are reviewed "*de novo*." *Utah Stream Access Coal. v. VR Acquisitions, LLC*, 439 P.3d 593, 600 (Utah 2019). The Court "assum[es] the truth of the allegations in the complaint and draw[s] all reasonable inferences therefrom in the light most favorable to the plaintiff." *Castro*, 2019 UT 71, ¶11 (citation omitted). "A dismissal is a severe measure" and "if there is any doubt about whether a claim should be dismissed" the "issue should be resolved in favor of giving the party an opportunity to present its proof." *Colman v. Utah State Land Bd.*, 795 P.2d 622, 624 (Utah 1990).

STATEMENT OF THE CASE

A. Factual Background

1. Youth Plaintiffs Experience Profound and Disproportionate Harms from State Laws Mandating the Development of Fossil Fuels

Because of the development and combustion of fossil fuels extracted pursuant to state law, Utah's children live in the worst average air quality of any state in the nation and are already experiencing profoundly dangerous climate conditions. R.5, 9-31. Due to their status as children, and their still developing bodies and brains, Plaintiffs are particularly vulnerable to and disproportionally harmed by Utah's hazardous air quality and the effects of climate change. R.44, 54-57, 65, 67-72.

Each of the Plaintiffs is already experiencing acute harms to their health and safety from the hazardous air pollution caused by the development and combustion of fossil fuels pursuant to state law. R.9-10, 12-13, 16, 19-22, 24-25, 27-29, 48. Utah's harmful air quality causes the Youth to experience painful headaches and migraines, fatigue, shortness of breath, pain and difficulty breathing and is frequently so dangerous that the Youth cannot safely go outside and are forced to stay indoors. *Id.* For Sedona M., Utah's hazardous air can trigger life-threatening asthma attacks. R.13. The risk of further immediate and life-long harms to these Youth accumulates with every day of exposure. R.44. The link between fossil fuel air pollution and harms to children's physical, cognitive, and mental health and development is well established for a wide range of health conditions, including cardiovascular and respiratory diseases, central nervous system disorders, metabolic conditions, reproductive dysfunction, organ damage, cancer, depression, anxiety, and other serious health effects. R.46. Exposure to Utah's dangerous air quality *today* is taking years off the lifespans of Utah's children, including Youth Plaintiffs. R.49-50.

Youth Plaintiffs are likewise experiencing profound and increasing harms to their lives, health, and safety from the dangerous climate changes caused by the development and combustion of fossil fuels pursuant to state law. R.9-31. Increasing temperatures and deadly heatwaves make it increasingly hazardous

for the Youth to engage in activities necessary for their health and growth or even to safely go outdoors. R.10-11, 14-15, 17-23, 25-26, 28. Increasing wildfires and lengthening wildfire seasons threaten Plaintiffs and their homes. R.13, 15-16, 18-20. Increasing exposure to wildfire smoke exacerbates Utah's already dangerous air quality, causing them headaches, shortness of breath, painful breathing, forced time indoors, and increases the risk of triggering additional medical problems. R.9-31. Changing precipitation patterns, drought, and flooding threaten the Youth's food and water security, increase the risk of wildfire, and are shrinking the Great Salt Lake, subjecting the Youth to toxic dust blown from the exposed lakebed. R.10-11, 14-15, 17-18, 20, 22-23, 25-26, 28, 62. These and other climate changes will only worsen with continuing fossil fuel development, causing further harm to the lives, health, and safety of Utah's children, including Youth Plaintiffs. R.56, 58, 65, 69-72.

2. The Challenged Statutes and Implementing Conduct of Defendants Cause and Contribute to the Dangerous Air Quality and Climate Changes Harming Youth Plaintiffs

Defendants control fossil fuel development in Utah. R.32-33. All fossil fuel development requires state approval. R.33, 39. Pursuant to the Utah Energy Act, the Governor, Office of Energy Development, and Energy Advisor have statutory authority to coordinate state energy policy and develop and implement state energy and natural resource development and conservation goals, programs, and

plans. R.32-33, 36. Utah Code § 79-6-101, *et seq.* Pursuant to the Utah Coal Mining and Reclamation Act and the Utah Oil and Gas Conservation Act, the Board and Division of Oil, Gas, and Mining have statutory authority over the approval or denial of all fossil fuel development projects within the state. R.33. Utah Code §§ 40-10-1, *et seq*.; 40-6-1, *et seq*. Without the Division's authorization, no fossil fuel development can lawfully occur in Utah. R.39. The statutory provisions these youth challenge as unconstitutional direct Defendants to exercise their authority to maximize, promote, and systematically authorize fossil fuel development. R.33-36. Utah Code §§ 79-6-301(1)(b)(i); 40-10-1(1); 40-10-17(2)(a); 40-6-1; 40-6-13.

By following the dictates of these provisions, R.36-38, Defendants are responsible for vast quantities of fossil fuel emissions, including the substantial majority of localized air pollution and over three billion metric tons of greenhouse gases ("GHGs"). R.39-42. These emissions worsen Utah's air quality and contribute to the climate crisis, and thus, Youth Plaintiffs' resulting injuries. R.40-42. With Utah's air quality and atmospheric levels of GHGs already at dangerous levels, every additional ton of emissions from the development and combustion of Utah's fossil fuels further harms and endangers Youth Plaintiffs. R.42.

3. A Favorable Ruling Would Alleviate Plaintiffs' Injuries

Youth Plaintiffs' injuries can be alleviated by declaring the challenged laws and Defendants' implementing conduct unconstitutional. This would remove the legal mandates for Defendants to maximize, promote, and systematically authorize fossil fuel development and instruct Defendants that they can no longer exercise their authority in that manner, thereby reducing the injurious source of pollution and allowing Defendants to conform their conduct to their constitutional duty to refrain from causing harm. R.81-82; *see* Section II.

B. Procedural History

Youth Plaintiffs filed suit in March 2022, seeking declaratory judgment that the laws directing Utah's executive branch to maximize, promote, and systematically authorize the development of fossil fuels, and Defendants' implementing conduct, violate their rights to life and freedom from substantial governmental endangerment of their health and safety. R.1-94. Defendants moved to dismiss. R.148-76. Following briefing, R.188-223, and a hearing, the Third Judicial District Court, Honorable Robert Faust, dismissed with prejudice, ruling that the Youth's constitutional claims present a nonjusticiable political question, that declaratory relief would provide no redress, and that Utah's due process protections do not apply to fossil fuel policy. R.408-19.

SUMMARY OF ARGUMENT

The district court erred in dismissing the Youth's constitutional claims of endangerment of life, health, and safety as presenting a nonjusticiable political question. The constitutionality of the challenged statutes and conduct presents cognizable judicial questions appropriate for judicial resolution. The text and history of Utah's Constitution and this Court's longstanding precedent demonstrate that it is squarely within judicial power to review legislative and executive action for compliance with Utah's Constitution. In finding Plaintiffs' claims for declaratory relief nonjusticiable, the district court relied exclusively on inapposite, non-binding cases in which courts outside of Utah found justiciability problems with relief Plaintiffs *do not request,* effectively dismissing a case Plaintiffs did not bring. The district court's political question analysis upends Utah's separation of powers, broadly foreclosing constitutional claims by conflating the judicial duty to adjudicate the constitutionality of legislative and executive action with the act of legislating itself. This Court has *never* found a constitutional rights claim to implicate a nonjusticiable political question. To do so in the present context would displace the judiciary's co-equal role in Utah's system of checks of balances and place the development of fossil fuels, which are nowhere mentioned in Utah's Constitution, above express restrictions and protections for the constitutional rights of children to life, health, and safety.

The district court further erred in concluding that declaratory relief would not provide meaningful redress for the alleged constitutional violations. A declaration of the unconstitutionality of the challenged statutes and conduct would reduce fossil fuel development and resulting emissions by removing the mandates for public officials to maximize such activity, providing at least partial redress for Youth Plaintiffs' ongoing injuries.

Finally, the district court erred in inventing an exception for fossil fuels to the express constitutional rights to life, liberty, and property. Under the district court's ruling, the entire legal landscape of fossil fuels would be exempt from review for consistency with due process and inalienable rights, and there could be no possible set of facts under which fossil fuel policies could conceivably infringe the rights to life, liberty, and property. However, the original public meaning of Utah's inherent and inalienable rights and due process protections under article I, sections 1 and 7, confirmed by over a century of precedent, verifies that Utah's Constitution provides broad protections for life, health, and safety applicable to all manner of governmental policies. Utah's Constitution provides no exception for fossil fuels. At this early stage, the Youth's allegations that Utah's fossil fuel policies and practices are harming their lives, health, and safety are sufficient to allow them an opportunity to present evidence of their constitutional claims.

ARGUMENT

I. The Youth's Constitutional Claims Are Justiciable

The justiciability of Plaintiffs' claims is a matter for determination under Utah's Constitution itself, and, as explained in Section I.B, not the test federal courts apply under *Baker v. Carr* to identify political questions under the U.S. Constitution. 369 U.S. 186 (1962). However, both analyses show the district court erred in holding Plaintiffs' claims nonjusticiable.

A. The Youth's Claims Are Justiciable Under Utah's Constitution

Utah's Constitution includes provisions defining judicial power, an express separation of powers clause, and explicit protections for access to courts. Utah Const. art. VIII, §§ 1, 2, 5; art. V, § 1; art. I, § 11. These provisions provide clear standards and a rich history Utah's courts have looked to since statehood to determine whether particular claims are within judicial cognizance. Their application here confirms Plaintiffs' constitutional claims are appropriate for judicial resolution.

To be sure, a rare claim under Utah's Constitution may present a nonjusticiable question – for instance, where the constitutional text expressly dedicates underlying issues exclusively to another branch and the claimed infringement does not involve individual rights. *State v. Evans*, 735 P.2d 29, 32 (Utah 1987) (challenge to legislators' qualifications was nonjusticiable because

article VI, section 10 makes the legislature judge of members' qualifications and "no claim [was] made that anyone's personal constitutional rights [were] being infringed"). Here, however, where these Youth ask Utah's courts to determine whether legislative and executive action impermissibly endangers their lives, health, and safety under article I, sections 1 and 7, and nothing in Utah's Constitution exempts issues pertaining to fossil fuels from judicial review, Plaintiffs' claims are justiciable.

1. The Youth's Claims Are Squarely Within "Judicial Power" Under Article VIII

Plaintiffs' constitutional claims are well within "judicial power" under article VIII. The text and history of article VIII, and this Court's consistent interpretation of the judiciary's role thereunder, establish that constitutional review is a central judicial duty, to which there is no exception for fossil fuel policies. The "constitution grants the district courts" the "authority to adjudicate matters that affect a citizen's" constitutional "rights." *Matter of Childers-Gray*, 2021 UT 13, ¶65, 487 P.3d 96 (citing art. VIII, §§ 1, 5). Indeed, article VIII, section 2 expressly authorizes this Court to "declare *any law* unconstitutional under this constitution." (emphasis added). Although this provision was added in 1984, it makes express an understanding of "judicial power" under article VIII, section 1 dating back well before statehood. "The idea that courts may review legislative

action was so 'long and well established' by the time" of *Marbury v. Madison,* "in 1803 that Chief Justice Marshall referred to judicial review as 'one of the fundamental principles of our society.'" *Moore v. Harper*, 143 S.Ct. 2065, 2081 (2023) (quoting 5 U.S. 1 Cranch 137, 176-77 (1803)).

Utah's framers carried this principle forward. During the proceedings of Utah's constitutional convention, delegate Bowdle described the broadly applicable "duties" of Utah's courts to "construe this very Constitution" and "pass upon *all legislative acts* that may come before" them. *Proceedings and Debates of the Convention Assembled to Adopt a Constitution for the State of Utah*, Day 51 (hereinafter "*Proceedings*") (emphasis added).[1] Professor Thomas Cooley, "the preeminent authority of the late nineteenth century on state constitutional matters," *Am. Bush v. City of S. Salt Lake*, 2006 UT 40, ¶13, 140 P.3d 1235, wrote that "the right and the power of the courts" to declare the unconstitutionality and invalidity of any "law, or any direction or decree" is "universally conceded[.]" *A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union* *45-46 (2d ed. Little, Brown, & Company 1871)

[1] Available at https://le.utah.gov/documents/conconv/utconstconv.htm.

(hereinafter Cooley, *Constitutional Limitations*).[2] "The courts have thus" the "duty to pass upon the constitutional validity" of "legislative" and "executive acts." *Id.* at *44.

In keeping with this principle, since statehood, this Court has consistently held that constitutional review is a core judicial duty reaching all manner of legislative and executive action. *Holden v. Hardy*, 46 P. 756, 760 (Utah 1896) ("It is the duty of the court to interpret, construe, expound, and apply the law" "expressed in [the] constitution"); *Ritchie v. Richards*, 47 P. 670, 675-76 (Utah 1896) (Bartch, J., concurring) ("the courts have the *unquestioned* right to declare *any* act of the government, in *any* of the departments, which violates the constitution, to be utterly void.") (emphasis added); *State v. Holtgreve*, 200 P. 894, 900 (Utah 1921) (courts have a broad "duty" to "safeguard the [constitutional] rights of the individual *whenever such rights are invaded from whatever source*.") (emphasis added). Nearly a century after Utah's founding, this Court reaffirmed with equal clarity the enduring principle that Utah's courts cannot "shirk [their] duty to find an act of the Legislature unconstitutional when it clearly appears that it conflicts with some provision of our Constitution." *Matheson v. Ferry*, 641 P.2d 674, 680

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[2] Available at https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1009&context=books.

(Utah 1982); *accord Skokos v. Corradini*, 900 P.2d 539, 541 (Utah Ct. App 1995) (If a claim "questions the constitutionality of a particular political policy, courts are acting within their authority in scrutinizing such claims"). There is simply no basis for exempting fossil fuel laws from review by courts of "general jurisdiction" authorized to "declare any law unconstitutional." Utah Const. art. VIII, §§ 1, 2.

2. Exempting Fossil Fuel Policies from Constitutional Review Would Violate Utah's Separation of Powers Clause

Insulation of the challenged provisions from constitutional scrutiny would violate Utah's separation of powers. Article V, section 1, states:

> The powers of the government of the State of Utah shall be divided into three distinct departments, the Legislative, the Executive, and the Judicial; and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted.

In *Ellison v. Barnes*, just five years after enactment of Utah's Constitution, this Court applied article V, section 1 to evaluate whether a challenge to an election contest was a nonjusticiable political question. 63 P. 899, 900 (Utah 1901). The provision establishes a "relatively straightforward three-step inquiry." *In re Young*, 1999 UT 6, ¶8, 976 P.2d 581. As applied to whether judicial resolution of a claim would violate the separation of powers, the first step asks whether Utah's courts are "charged with the exercise of powers properly belonging to one of the three branches of government." *Id.* (cleaned up). The second step asks whether

"the function" courts are being asked to perform in adjudicating a claim is "one appertaining to another branch of government." *Id.* A power "appertaining to" another branch is one "exclusive" to it. *Id.* at ¶14. A power may be exclusive to another branch where there is a textual commitment of the specific issue in Utah's Constitution. *Ellison*, 63 P. at 900 (election contest was nonjusticiable because article VI, section 10 is exclusive commitment to legislature to judge elections of members); *Evans,* 735 P.2d 29 (challenge to legislators' qualifications was nonjusticiable because article VI, section 10 is exclusive commitment to legislature to judge qualifications of members). If the answer to either the first or second question is "no," there is no violation of article V, section 1; if the answer to both questions is "yes," the inquiry proceeds to the third step, under which a separation of powers violation is found unless Utah's Constitution "expressly direct[s] or permit[s]" the courts' "exercise of the otherwise forbidden function[.]" *In re Young*, 1999 UT 6, ¶8.

Here, the answer to the first question is "yes," because the judiciary is itself "one of the three branches of government" and is "charged with the exercise of" judicial power. *Id.* However, the answer to the second question is categorically "no," ending the inquiry and establishing that adjudicating Plaintiffs' constitutional claims presents no separation of powers problem. The "function" of adjudging and declaring the constitutionality of the challenged provisions and

conduct is not one "appertaining to another branch of government." *Id.* Indeed, the duty of constitutional review is exclusive to the judiciary, *see* Section I.A.1, and, as the district court itself acknowledged, nothing in Utah's Constitution addresses fossil fuels, air pollution, or climate change, R.413, let alone dedicates matters involving them exclusively to another branch to exempt them from review.

Contrary to the district court, R.411, the general dedication of legislative authority in article VI, section 1 does not approach the level of specificity necessary for an exclusive textual commitment of Plaintiffs' claims to another branch. *Compare Ellison*, 63 P. at 900. Moreover, even where Utah's Constitution explicitly directs the legislature to legislate on *particular* subjects, which is not the case for fossil fuels, courts must still review resulting legislation for consistency with "other applicable provisions of the Constitution." *Matheson*, 641 P.2d at 677. For example, in *Parkinson v. Watson*, where the "constitutional mandate" to enact apportionment laws was "addressed, not to the courts, but to the legislature," this Court still fulfilled its duty of constitutional review, explaining that courts are "required to adjudicate the limitations upon the authority of other departments of government." 291 P.2d 400, 403 (Utah 1955); *accord In re Young*, 1999 UT 6, ¶19 (same principle). And even where Utah's Constitution expressly dedicates a *precise* issue to another branch, which is not the case here, courts must still review

claims that "personal constitutional rights are being infringed upon." *Evans,* 735 P.2d at 32.

Since statehood, the exercise of legislative and executive power has always been understood as subject to judicial review for compliance with the limitations and rights afforded in Utah's Constitution, including the inalienable rights and due process protections under which these Youth bring their claims. *E.g., In re Handley's Est.*, 49 P. 829 (Utah 1897) (invalidating unconstitutional statute); *Kimball v. Grantsville City*, 57 P. 1, 5 (Utah 1899) (legislative authority is limited by "express or implied" constitutional restraints); *Mitchell v. Roberts*, 2020 UT 34, ¶31, 469 P.3d 901 ("the due process guarantee has long been understood as a limitation on the legislative power"). During the Utah Constitutional convention, delegate Evans explained that the "function of a constitution is to put restrictions upon future legislation. If this were not true, it would be wholly unnecessary to make any Constitution at all." *Proceedings*, Day 18. Cooley wrote that "where fundamental rights are declared by the constitution," it is "for the express purpose of operating as a restriction upon legislative power." *Constitutional Limitations* *176. The general dedication of legislative authority is plainly insufficient to preclude review in this declaratory judgment action challenging the constitutionality of legislation itself. To affirm the district court's conception

of article VI, section 1 would eviscerate any limitation on legislative power, together with the judiciary's core role under article VIII.

Contrary to the district court's conclusion, it is the insulation of Defendants' policies and conduct from constitutional review, rather than adjudication of Plaintiffs' claims, that would threaten the constitutional order. If article VI, section 1 were sufficient to foreclose review of Plaintiffs' constitutional claims, Utah's courts would be proscribed from hearing *any* constitutional challenge to legislation, giving the legislature unrestricted authority to pass any law, however repugnant to Utah's Constitution, and to *itself* determine the constitutionality of its own enactments. Cooley explained that such a construction is "mere nonsense" as it would render the inalienable rights and due process protections underlying Plaintiffs' claims "absolutely nugatory[.]" *Constitutional Limitations* *354. However, the "core judicial function" of constitutional review can neither be delegated nor usurped. *Salt Lake City v. Ohms*, 881 P.2d 844, 848 (Utah 1994). This Court's precedent is clear that "[t]he assumption of judicial power by the legislature in such a case is unconstitutional," *Ellison*, 63. P. at 901, and the political branches are not "appropriate parties" to determine the constitutionality of their own actions. *Gregory v. Shurtleff*, 2013 UT 18, ¶31, 299 P.3d 1098; *State v. Dist. Ct.*, 78 P.2d 502, 511 (Utah 1937) ("The right of the legislature" to "constitute itself the judge of its own case" or "in any manner to interfere with the just powers

and province of courts" in "administering right and justice, cannot for a moment be admitted or tolerated under our constitution."), *overruled on other grounds, Colman*, 795 P.2d 622. Justice Stewart warned of the dangers of such arrogation of power by the legislature in *Matheson*:

> Such a power would enable the Legislature to assert dominance over the Judiciary and effectively destroy it as an independent branch of government. . . . and it would be virtually certain that judicial review – the doctrine which has given critical vitality and efficacy to constitutional government limited by a written constitution – would be destroyed.

641 P.2d at 688-89 (Stewart, J., concurring).

The very purpose of the separation of powers is to protect "individual rights and liberties" from "abuse of governmental power," not to insulate and make the conduct of two branches unreviewable. *In re Young*, 1999 UT 6, ¶74 (Stewart, J., dissenting); *In re Handley's Est.*, 49 P. at 830. The district court conflated the duty to review and declare the constitutionality of legislative and executive action with the act of legislating itself. R.411. However, it is axiomatic that in exercising the "unquestioned right to declare any act of the government, in any of its departments, which violates the constitution, to be utterly void," courts "do not trench upon the domain of the legislative department, although they pass judgment upon its official acts." *Ritchie*, 47 P. at 676 (Bartch, J., concurring); *Wadsworth v. Santaquin City*, 28 P.2d 161, 172 (Utah 1933); Amic. Br. of Conference

of Chief Justices, *Moore*, No. 21-1271, 2022 WL 4117470, *5 (2022) ("[S]tate courts" are "engaged in judicial review, not legislative acts, when they determine the content and constitutionality of state laws.").

For the separation of powers clause to have efficacy, Utah's courts must be open to these youth to review their constitutional claims on the merits. To close the courthouse doors on them would result in the "elevation of legislation" over Utah's due process and inalienable rights protections – "clear constitutional limitation[s]" "designed to protect individual rights" – and would "strike[] at the heart of constitutional government." *Colman*, 795 P.2d at 634.

3. Insulating Fossil Fuel Policies from Review Is Inconsistent with Utah's Constitutional Protection for Access to Courts

The district court's decision also conflicts with the open courts and procedural due process protections of Utah's Constitution. Utah Const. art. I, §§ 7, 11; *Miller v. USAA Cas. Ins. Co.*, 2002 UT 6, ¶38, 44 P.3d 663 ("The analysis to determine whether" a claimant has been denied their "constitutional right to a day in court" is "the same under both the open courts provision and the due process clause."). These provisions "ensure[] that courts are to be accessible to all for the resolution of their disputes and make[] clear that this right to come into court is a fundamental value of our governmental compact." *Jeffs v. Stubbs*, 970 P.2d 1234, 1250 (Utah 1998). Even prior to statehood, Utah's highest court made

clear that "due process of law" means "that a party shall have his day in court, – trial; which means the right" to "introduce evidence to establish his right to recover[.]" *Jensen v. Union Pac. Ry. Co.*, 21 P.994, 995 (Sup. Ct. of Terr. of Utah 1889). Therefore, Utah's courts must "resolve doubts in favor of permitting parties to have their day in court on the merits of a controversy." *Miller*, 2002 UT 6, ¶41.

If, as the district court ruled, the constitutional allocation of legislative authority to the legislature were enough to require courts to "refuse to resolve" Plaintiffs' constitutional claims, "that refusal would deny this fundamental right," *Jeffs*, 970 P.2d at 1250, not only to these Youth, but to anyone challenging unconstitutional state laws.[3]

Constitutional protection of the fundamental right to a day in court specifically extends to the "right to be free from, and to obtain judicial relief for, unjustified intrusions on personal security," as alleged here. *Berry v. Beech Aircraft Corp.*, 717 P.2d 670, 680 (Utah 1985) (citation omitted). The fundamental nature of the right to a day in court is further reflected in article I, section 1, which explicitly

[3] The district court rejected this argument, reasoning that the Open Courts clause "revolves around the judicial system, not the specific results of the judicial action." R.418 (quoting *Jeffs*, 970 P.2d at 1250). However, the Youth never argued that the clause guarantees specific results in this case, only that it protects their right to have their constitutional claims determined *on the merits*. *Miller*, 2002 UT 6, ¶41.

protects the "inherent and inalienable right" of all persons to "defend their lives and liberties." That is precisely what these Youth seek to do in these proceedings – to defend their lives and liberties from endangerment by Defendants. Here, where the allegations demonstrate that the challenged statutes and conduct are profoundly endangering the health and safety of these Youth, it is essential that Utah's courts hear their claims.

B. Utah's Constitutional Provisions, Not *Baker v. Carr*, Govern the Justiciability of Plaintiffs' Claims

The analysis above is where the political question inquiry should end. This Court has not imported the federal *Baker* test into Utah law and it should decline to follow the district court's error in doing so. R.410. In *Matter of Childers-Gray*, the only case in which this Court has even referenced the *Baker* test, this Court did not adopt, analyze, or apply any of the *Baker* factors. 2021 UT 13, ¶¶60-73 (citing 369 U.S. 186 (1962)). Nor did this Court analyze whether *Baker* applies to claims under Utah law. It does not. As the Wyoming Supreme Court stated, the "federal doctrine of nonjusticiable political question[s], as discussed and applied in *Baker* and later federal decisions, has no relevancy and application in state constitutional analysis." *State v. Campbell Cnty. Sch. Dist.*, 32 P.3d 325, 334 (Wyo. 2001).

Because state and federal standards often differ due to being "based on different constitutional language and different interpretive case law," *Jensen v. Cunningham*, 2011 UT 17, ¶45, 250 P.3d 465, this Court "analyzes issues under the state constitution before resorting to the federal constitution[.]" *Am. Bush*, 2006 UT 40, ¶7; *accord In re Gestational Agreement*, 2019 UT 40, ¶67, 449 P.3d 69 (Pearce, J., concurring) (regarding whether "an element of federal justiciability applies as a matter of Utah constitutional law"). Here, a comparison of the Utah and federal Constitutions, as well as this Court's precedent, establishes that whether a claim under Utah's Constitution implicates a political question is a matter for analysis under Utah's Constitution.

The *Baker* test is rooted in limitations federal courts have extruded from the "case or controversy" requirement of Article III of the U.S. Constitution. *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 215 (1974). However, "the judicial power of the state of Utah is not constitutionally restricted by the language of Article III of the United States Constitution requiring 'cases' and 'controversies,' since no similar requirement exists in the Utah Constitution." *Gregory*, 2013 UT 18, ¶12 (citation omitted); *accord Laws v. Grayeyes*, 2021 UT 59, ¶82, 498 P.3d 410 (Pearce, J., concurring). Conversely, the unique provisions of Utah's Constitution defining judicial power, its express separation of powers clause, and its explicit protections for access to courts are not included in the U.S.

Constitution. Utah Const. art. VIII, §§ 1, 2, 5; art. V, § 1; art. I, § 11. The justiciability of Plaintiffs' claims is a matter for measurement under these provisions, not the federal *Baker* test. *See* Section I.A.[4]

C. The Youth's Constitutional Claims Implicate None of the *Baker* Factors

Even if the *Baker* standard did apply to claims under Utah law, a thorough analysis, informed by Utah's Constitution, further demonstrates that Plaintiffs' claims present no nonjusticiable political question. "[T]he Judiciary has a responsibility to decide cases properly before it, even those it 'would gladly avoid,'" and the federal political question doctrine is a "narrow exception to that rule." *Zivotofsky v. Clinton*, 566 U.S. 189, 194-95 (2012).

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[4] Even if the *Baker* factors applied as a matter of prudential rather than constitutional limitations, they cannot be elevated to equal constitutional status with or employed to preclude review of legislation for consistency with Plaintiffs' explicitly protected constitutional rights. *Cf. Grayeyes*, 2021 UT 59, ¶84 (Pearce, J., concurring) ("there are reasons to believe that the Utah Constitution may not actually impose [traditional] standing requirements, and that the better way to view them are as prudential standards"). According to the alleged facts, without declaratory relief, Defendants' ongoing implementation of the challenged statutes will continue to profoundly endanger the health and safety of these youth and take years off their lives. R.30-31, 39-42, 81-82. Prudence therefore counsels to "resolve doubts in favor of permitting" the Youth "to have their day in court on the merits[.]" *Miller*, 2002 UT 6, ¶41; https://www.britannica.com/dictionary/prudence ("Prudence" is the "careful good judgment that allows someone to avoid danger or risks.").

1. There Is No Exclusive Textual Commitment of Youth Plaintiffs' Constitutional Claims to Another Branch

The first *Baker* factor requires a "textually demonstrable constitutional commitment" to another branch of the "particular question posed[.]" 369 U.S. at 211, 217. There is no exclusive textual dedication of the issues underlying Plaintiffs' claims to another branch under Utah's Constitution. Indeed, the district court itself recognized that "Utah's Constitution" does not "address[] anything about fossil fuels" or "climate change[,]" R.413, which is dispositive for the first, and most important, *Baker* factor.[5]

2. Manageable Standards Govern the Youth's Constitutional Claims

Regarding the second *Baker* factor, "judicially discoverable and manageable standards" are readily available "for resolving" Plaintiffs' claims. 369 U.S. at 217. "[I]t is clearly" the "prerogative and responsibility" of Utah's courts to "articulate the standard for assessing due process violations." *Kuchcinski v. Box Elder Cnty.*, 2019 UT 21, ¶40 n.67, 450 P.3d 1056. "One need only examine the litany

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[5] The *Baker* factors are "listed in descending order of both importance and certainty." *Vieth v. Jubelirer*, 541 U.S. 267, 278 (2004). The U.S. Supreme Court has never found a nonjusticiable political question absent implication of the first *Baker* factor. The district court, and the parties below, only addressed the first, second, and fourth *Baker* factors. Plaintiffs thus limit their discussion here to those factors.

of case law" "interpreting the broad language of such constitutional provisions as the due process [clause] and establishing standards on which to invoke the rights enshrined in those fundamental laws to reject the disingenuousness of the 'absence-of-standards' rationale." *Campbell Cnty. Sch. Dist.*, 32 P.3d at 335-36. Contrary to the district court's conclusion that "no guiding or limiting principles are" available to resolve Plaintiffs' claims, R.413, such principles are inherent in the bedrock constitutional rights Plaintiffs invoke, the tiers of scrutiny, and in the factual record which, when assembled, would inform their application.

As this Court ruled in *Cunningham*, the protections of article I, sections 1 and 7 "articulate[] rule[s] sufficient to give effect to the underlying rights and duties intended by the framers[.]" 2011 UT 17, ¶¶59-62. That the Youth's claims involve application of these bedrock protections to new factual circumstances does not alter their applicability. "The Utah Constitution enshrines principles, not application of those principles" and it is the courts' duty to determine "what principle the constitution encapsulates and how that principle should apply." *S. Salt Lake City v. Maese*, 2019 UT 58, ¶70 n.23, 450 P.3d 1092. Utah's courts are regularly asked to address issues of first impression and to apply constitutional principles to new legal questions and factual contexts. Indeed, the "fundamental interests of 'life, liberty, and property'" were specifically intended to apply to new

and changing circumstances and "to be protected as societal and jurisprudential concepts of those terms evolved." *DeBry v. Noble,* 889 P.2d 428, 435 (Utah 1995).

Whether the rights to life and liberty, and their enjoyment, encompass protection from the profound harms the Youth are experiencing is to be determined under traditional methods of constitutional interpretation. *See* section III.B; *Utah Sch. Bds. Ass'n v. Utah State Bd. of Educ.*, 2001 UT 2, ¶9, 17 P.3d 1125 (courts have the exclusive "power and duty" to "ascertain[] the meaning of a constitutional provision"). Similarly, whether the challenged statutes impermissibly infringe those protections is a matter for determination on the evidence, applying the tiers of scrutiny framework broadly applicable to alleged infringements of life and liberty under Utah's Constitution. *E.g., Skokos,* 900 P.2d at 542 (whether government "actions pass constitutional muster" under the tiers of scrutiny is "*certainly* a justiciable issue[.]") (emphasis added).

As in any inalienable rights or due process challenge, a determination of constitutionality here would not be made in a vacuum. It would be made through application of the appropriate level of scrutiny to the facts in the context of the evidence and arguments presented by both parties. At this early stage, the Youth are entitled to a presumption of the truth of their allegations, which, if proven,

set forth particulars against which Utah's courts can manageably apply a tiers of scrutiny analysis.[6]

The Youth allege that:

- They are experiencing serious harms to their physical and mental health and losing years off their lives from the dangerous air quality and climate conditions in Utah resulting from the development and combustion of fossil fuels pursuant to the challenged statutes. R.9-31.

- Defendants past and ongoing implementation of the challenged provisions has and is substantially causing and contributing to the Youths' injuries. R.36-39. Through their continuing maximization, promotion, and systematic authorization of fossil fuel development, Defendants are responsible for vast quantities of fossil fuel emissions, including the substantial majority of localized air pollution and over 3 billion metric tons of GHGs. R.39-42.

- With air quality and atmospheric levels of GHGs already at dangerous levels in Utah, every molecule of additional emissions from the development and combustion of Utah's fossil fuels further harms and endangers Youth Plaintiffs and exacerbates their existing injuries. R.42.

- Defendants' continuing maximization, promotion, and authorization of fossil fuel development pursuant to the challenged statutes will continue to worsen Plaintiffs' already serious injuries, causing them further substantial harm. R.41.[7]

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[6] *See Held v. Montana*, No. CDV-2020-307, Findings of Fact, Conclusions of Law, and Order, 100-01 (Mont. 1st Jud. Dist. Ct. Aug. 14, 2023) (applying strict scrutiny to fossil fuel-favoring statutes due to harms to youth's health and safety on a full factual record after trial, demonstrating manageability).

[7] *See Held*, Findings of Fact, Conclusions of Law, and Order, 26-70 (finding similar allegations against the State of Montana proven at trial).

The alleged harms to Plaintiffs' longevity, health, and safety from the challenged statutes are squarely within the scope of the fundamental protections for life and liberty afforded by Utah's Constitution. *See* Section III.B. If the evidence proves Plaintiffs' allegations, a traditional strict scrutiny analysis would thus assess whether the challenged statutes' mandates for Defendants to maximize, promote, and systematically authorize fossil fuel development are "narrowly tailored to further a compelling state interest." *Matter of Adoption of K.T.B.*, 2020 UT 51, ¶37 and n.67, 472 P.3d 843.[8] Here, the Youth allege that they are not. R.80-81, 86, 90 (economically and technologically feasible alternative means to provide energy, support economic development, and raise revenue that

[8] That air pollution and climate change involve science does not alter justiciability. The availability of manageable standards is not a question of whether the case is "large, complicated, or otherwise difficult to tackle from a logistical standpoint," but whether "a legal framework exists by which courts can evaluate the[] claims in a reasoned manner." *Alperin v. Vatican Bank*, 410 F.3d 532, 552, 555 (9th Cir. 2005). Courts have often decided "basic questions of human liberty, the resolution of which demanded an understanding of scientific matters." Stephen Breyer, *Science in the Courtroom*, 16 Issues in Sci. & Tech. no. 4 (2000). "Scientific issues permeate the law" and courts "must search for law that reflects an understanding of the relevant underlying science, not for law that frees [defendants] to cause serious harm[.]" *Id.* As in any case involving science, expert testimony on "scientific, technical, or other specialized knowledge" would aid in resolution of Plaintiffs' claims. Utah R. Evid. 702. Indeed, as factfinders, courts are "routinely called upon to evaluate complex scientific evidence[.]" *State v. Jones*, 2015 UT 19, ¶33, 345 P.3d 1195.

do not endanger Plaintiffs' lives, health, and safety are readily available); *see also Held*, Findings of Fact, Conclusions of Law, and Order, 80-84 (evidence at trial proved similar allegations against State of Montana).

The district court's ruling that the second *Baker* factor requires a "limited and precise standard" for "redressing the asserted violation," R.413-14, is inconsistent with traditional principles of justiciability and constitutional analysis.[9] Adjudicating constitutional challenges to statutes does not require courts to determine precisely what alternative policy approach *would be* constitutional.[10] Courts "need not" "draw a mathematical bright line between the constitutionally acceptable and the constitutionally unacceptable that would fit every case." *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 582-83 (1996). Indeed, "due process under article I, section 7 of the Utah Constitution" is "not a bright line

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[9] That the United States Supreme Court has uniquely required such precision for partisan gerrymandering claims under the U.S. Constitution does not translate here. "This court, not the United States Supreme Court, has the authority and obligation to interpret Utah's constitutional guarantees, including the scope of due process" and "owe[s] no . . . deference in that regard[.]" *State v. Tiedemann*, 2007 UT 49, ¶33, 162 P.3d 1106.

[10] *Wildgrass Oil & Gas Committee v. Colorado*, which the district court relied on, supports the point. 447 F.Supp.3d 1051, 1060-61 (D. Colo. 2020) ("I am not asked to decide whether pooling or fracking is 'good policy' but rather whether the statute violates" the "Due Process Clause." "Therefore, I reject the argument that this case involves a nonjusticiable political question.").

test." *Tiedemann,* 2007 UT 49, ¶41. Courts "develop[] a body of" constitutional "doctrine on a case-by-case basis" because "[w]hat is marginally permissible in one [case] may be unsatisfactory in another, depending on the particular circumstances[.]" *Reynolds v. Sims,* 377 U.S. 533, 578 (1964). The district court's insistence that resolving Plaintiffs' claims requires Utah's courts to speculate on and decide the constitutionality of any conceivable alternative policy approach contravenes principles of judicial restraint and the foundational concept that the "Utah Constitution enshrines principles, not application of those principles." *Maese,* 2019 UT 58, ¶70 n.23.

Nor, contrary to the district court's reasoning, are the Youth's constitutional claims somehow unmanageable because the challenged statutes reflect a legislative balancing of interests. R.413-14. The legislature balances interests in *every* statute and it is the courts' duty to determine whether the balance struck violates Utah's Constitution. *Matheson,* 641 P.2d at 680. The accommodation of competing constitutional prerogatives" is a "common and necessary one in constitutional adjudication." *Berry,* 717 P.2d at 677. If Utah's courts were "free to refuse to give substance and meaning" to constitutional rights because they "stand[] in tension with the power of the Legislature to adjust

conflicting interests[,]" they "could as well emasculate every provision in the Declaration of Rights by the same method of analysis." *Id.* at 678-79.[11]

Here, at minimum, resolving the Youth's claims is not unmanageable because the challenged provisions and resulting harms to them are, quite literally, "breathtaking" and fall clearly outside of "constitutionally acceptable" parameters. *BMW of N. Am., Inc.*, 517 U.S. at 583; R.9-29, 46-47 (detailing harms to respiratory health). The Youth do not claim that just any harm implicates their rights; they allege that Defendants' implementation of the challenged provisions results in *profound* and *substantial* endangerment of their health and safety and is taking *years* off their lives. R. 82-91. By the district court's reasoning, Utah's courts could not decide whether it would be constitutionally permissible for the state to deprive children of *any* number of years off their lives because setting a threshold for harm under Utah's Constitution is too difficult. That cannot be the case. That some future speculative case may present a closer call does not require this Court to close its doors to the constitutional violations here.

3. Resolving Constitutional Claims Involves No Lack of Respect for the Coordinate Branches

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[11] *See also* Cooley, *Constitutional Limitations* *160 ("[I]n declaring a law unconstitutional, a court must necessarily cover the same ground which has already been covered by the legislative department" and "they must indirectly overrule the decision of that co-ordinate department.").

The district court's conclusion that resolving Plaintiffs' constitutional claims would necessarily involve a "lack of the respect due coordinate branches" under the fourth *Baker* factor, 369 U.S. at 217, similarly upends the judiciary's role under Utah's system of divided powers.[12] "[T]he judiciary is a check upon the legislature by means of its authority to annul unconstitutional laws" but this does not "suppose a superiority of the judicial to the legislative power." Cooley, *Constitutional Limitations* *35, 46. If declaring statutes unconstitutional were precluded under the fourth *Baker* factor, courts could never exercise their "duty to find an act of the Legislature unconstitutional when" it "conflicts with some provision of our Constitution." *Matheson*, 641 P.2d at 680.

Whether analyzed under Utah's Constitution or under the *Baker* test, the ultimate responsibility to determine the constitutionality of the provisions and conduct challenged here "resides exclusively with the judiciary." *Utah Sch. Bds. Ass'n*, 2001 UT 2, ¶9. "A contrary conclusion would mean a doomsday for" Utah's courts' "historic judicial function." *Matter of Childers-Gray*, 2021 UT 13, ¶68.

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[12] The district court's fourth *Baker* factor analysis relied exclusively on Justice Lee's dissenting opinion from *Gregory*, 2013 UT 18. R.413. However, *Gregory* did not discuss the political question doctrine and the majority roundly rejected Justice Lee's reasoning, making clear that when a case involves "matters of great constitutional public importance," it weighs *in favor* of justiciability. 2013 UT 18, ¶11.

D. The District Court's Political Question Ruling Rests Entirely on Inapposite Cases, Not the Utah Constitution

In finding the Youth's constitutional claims for declaratory relief nonjusticiable, the district court relied entirely on inapposite out-of-state cases. R.409-13. Each found requests for affirmative injunctions directing governments to prepare and implement comprehensive plans to reduce pollution to be nonjusticiable. But this is relief these Youth *do not seek*. For instance, in *Juliana v. United States*, the Ninth Circuit explicitly stated that the "central issue" before it was whether "an Article III court can provide" an "order requiring the government to develop a plan to 'phase out fossil fuel emissions and draw down excess atmospheric CO2.'" 947 F.3d 1159, 1164-65 (9th Cir. 2020). Though the court concluded "reluctantly" that such relief was beyond federal courts' powers for purposes of Article III standing,[13] it upheld the district court's ruling that the political question doctrine did *not bar* the plaintiffs' constitutional claims. *Id.* at 1165, 1174 n.9; *Juliana v. United States*, 217 F.Supp. 3d 1224, 1235-42 (D. Or. 2016) (finding no political question after a full *Baker* analysis). The other cases the district court relied on likewise focused on requests for comprehensive remedial

[13] On remand, the *Juliana* youth plaintiffs' claims are proceeding to trial on an amended complaint seeking declaratory judgment. No. 6:15-cv-01517-AA, 2023 WL 3740334, *12-13 (D. Or. Jun. 1, 2023).

plans. *Sagoonick v. Alaska*, 503 P.3d 777, 797 (Alaska 2022) ("Plaintiffs primarily seek an injunction mandating that the State develop a 'climate recovery plan'"); *Aji P. v. Washington*, 480 P.3d 438, 447 (Wash. 2021) (same); *Iowa Citizens for Cmty. Improvement v. Iowa*, 962 N.W.2d 780, 797 (Iowa 2021) (same). *Clean Air Council v. United States*, though not dismissed on political question grounds, asked the court to enter the political branches' province by preventing the government from even "considering amendments to environmental laws," "'rolling back' environmental regulations, [or] making related personnel and budget changes." 362 F.Supp.3d 237, 242 (E.D. Pa. 2019). In contrast here, Plaintiffs seek a *declaratory judgment* that specific statutory provisions, through which Defendants are affirmatively and substantially endangering their health and safety, and taking years off their lives, violate their constitutional rights. R.91-93.[14]

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[14] Indeed, in analogous cases challenging the constitutionality of similar laws and government conduct for promoting fossil fuels and endangering the health and safety of youth, sibling courts have held claims for declaratory relief justiciable. In *Held v. Montana*, the court ruled the youth plaintiffs were entitled to seek a declaration of the unconstitutionality of state statutes promoting fossil fuels. No. CDV-2020-307, Order on Mot. to Dismiss, 21-22 (Mont. 1st Jud. Dist. Ct. Aug. 4, 2021). Montana's Supreme Court subsequently denied two petitions to dismiss the case. *Montana v. Mont. First Jud. Dist. Ct.*, No. OP 22-0315, 2022 WL 2128570 (Mont. June 14, 2022); *Montana v. Mont. First Jud. Dist. Ct.*, No. OP 23-0311, 2023 WL 3861790 (Mont. June 6, 2023). The case recently concluded a seven-day trial,

Disregarding this distinction, the district court effectively dismissed a case Plaintiffs have not brought and contravened the well-established principle that a declaration of unconstitutionality is a justiciable form of relief. *E.g.*, *Matheson*, 641 P.2d at 680 (courts cannot "shirk [their] duty to find an act of the Legislature unconstitutional when it clearly appears that it conflicts with some provision of our Constitution"); *Gray v. Defa*, 135 P.2d 251, 256 (Utah 1943) ("declaratory relief may be given in a separate proceeding where nothing but declaratory relief is sought"); *Steffel v. Thompson*, 415 U.S. 452, 466, 469 (1974) (declaratory relief is "plainly intended" to "act as an alternative to the strong medicine of the injunction" and has "a less intrusive effect"); *Powell v. McCormack*, 395 U.S. 486, 517 (1969) ("[w]e need express no opinion about the [justiciability] of coercive relief" because "petitioners sought a declaratory judgment, a form of relief the District Court could have issued."). "For centuries, declaratory relief has been one type of remedy that courts have considered themselves empowered to provide." *Williamson v. Farrell*, 2019 UT App. 123, ¶10, 447 P.3d 131. Indeed, article VIII,

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culminating in declaratory relief in the youth's favor. *Held*, Findings of Fact, Conclusions of Law, and Order. Similarly, in *Navahine v. Hawai'i Department of Transportation*, the court concluded that the youths' constitutional claims for declaratory relief should proceed to trial. No. 1CCV-22-0000631 (JPC), Order Denying Defs.' Mot. to Dismiss, 10-11 (Haw. 1st Circ. Ct. Apr. 19, 2023). *Held v. Montana* is the out-of-state case most parallel and instructive here.

section 2 of Utah's Constitution expressly authorizes Utah's judiciary to "declare any law unconstitutional[.]" Moreover, under Utah's Declaratory Judgment Act, which is to be "liberally construed and administered[,]" Utah Code § 78B-6-412, and "allow[s] for a wide interpretation of what constitutes a 'justiciable controversy[,]'" *Salt Lake Cnty. Comm'n v. Salt Lake Cnty. Att'y*, 1999 UT 73, ¶12, 985 P.2d 899, a lawsuit "may not be open to objection on the ground that a declaratory judgment" is "prayed for." Utah Code § 78B-6-401(1).

II. Declaratory Relief in the Youth's Favor Would Provide Meaningful Redress

Plaintiffs' factual allegations amply demonstrate their standing to seek declaratory relief. Utah's traditional standing test is "similar" but "not identical" to, and is more lenient than, the federal test. *S. Utah Wilderness All. v. Kane Cnty. Comm'n*, 2021 UT 7, ¶17, 484 P.3d 1146. Plaintiffs must first assert an "'actual or *potential*' injury[.]" *Brown v. Div. of Water Rts. of Dep't of Nat. Res.*, 2010 UT 14, ¶18, 228 P.3d 747.[15] "Second, they must allege a causal relationship between their injury and the challenged actions. And third, the relief requested must be substantially likely to redress the injury claimed." *S. Utah Wilderness All.*, 2021 UT

[15] "[A] plaintiff need not necessarily show that the alleged future injury is imminent, certainly impending, or even that its occurrence is more likely than not. Instead, a plaintiff" must "set forth allegations establishing that a reasonable probability" of "future injury exists." *Brown*, 2010 UT 14, ¶19.

7, ¶23 (cleaned up). At the pleading stage, plaintiffs may satisfy standing merely by alleging "adequate factual context to satisfy our notice pleading requirements" and allegations "will be assumed to embrace those specific facts that are necessary to support the claim." *Brown*, 2010 UT 14, ¶21 (citation omitted).

Here, Defendants did not dispute that Plaintiffs satisfy the injury and causation components of standing and the district court did not address those components.[16] In ruling that declaratory relief would provide no redress, the district court imposed a heightened redressability standard foreign to Utah's standing requirements, contradicted the Youth's well-pleaded factual allegations, disregarded precedent regarding the legal effect of the challenged statutes, and contravened the established power of declaratory relief to provide meaningful redress for constitutional violations.

A. Partial Redress Suffices Under Utah's Standing Doctrine and Would Provide Meaningful Relief of the Youth's Injuries

Contrary to the district court, Plaintiffs are not required to demonstrate a *certainty* that a favorable ruling would *completely* redress their injuries to a *precise*

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[16] The Youth's allegations readily demonstrate their individual injuries, R.9-31, and that the challenged laws and Defendants' implementation are causing and contributing to them. R.33-39 (challenged laws and Defendants' implementing conduct), 40-42 (cause and contribute to Utah's hazardous air and climate conditions, harming Plaintiffs).

degree, fully solving Utah's air quality and climate crises. *Contra* R.414-16. Rather, their burden at this stage is merely to allege that their present or threatened injuries would be at least alleviated by a favorable ruling. In *Jenkins v. Swan*, this Court made clear that redressability is satisfied at the pleading stage by allegations demonstrating that an "increased" adverse impact from government conduct would likely "be relieved" if the "government action is declared unconstitutional," and that both the increased adverse impact and the extent it would likely be relieved are matters for determination on the evidence. 675 P.2d 1145, 1153 (Utah 1983). Even under federal standing requirements, which are more onerous than Utah's, partial redressability is likewise all that is required. *E.g. Meese v. Keene*, 481 U.S. 465, 476 (1987); *Consumer Data Indus. Ass'n v. King*, 678 F.3d 898, 903 (10th Cir. 2012).

The Youth's detailed allegations amply satisfy the *Jenkins* standard. As more fully explained below, *see* Sections II.B, II.C, declaring the challenged laws and Defendants' implementing conduct unconstitutional would alleviate Plaintiffs' injuries because "[a]ny reduction in fossil fuel development in Utah is meaningful in addressing Youth Plaintiffs' injuries and reducing the risk of future harm." R.42; *Held*, Findings of Fact, Conclusions of Law, and Order, 24 (trial evidence established that "[e]very ton of fossil fuel emissions . . . increases the exposure of Youth Plaintiffs to harms now and additional harms in the future.").

B. The District Court's Ruling Contradicts Plaintiffs' Well-Pleaded Factual Allegations and Established Precedent Regarding the Effect of the Challenged Provisions

Contrary to Plaintiffs' factual allegations, and in contravention of this Court's precedent regarding the legal effect of the challenged provisions, the district court erroneously ruled that declaratory relief would provide no redress. R.414-16.

The magnitude of the district court's error is highlighted by context. Defendants did not dispute the Youths' injuries, R.9-31, that Defendants' conduct is causing and contributing to them, R.36-42, nor that they will be alleviated if Defendants do not continue to maximize, promote, and systematically authorize fossil fuel development. R.50, 81-82. Defendants disputed only whether invalidating the challenged statutes would provide redress. R.163-70. They did not dispute that declaring Defendants' *conduct* unconstitutional, as the Youth also requested, R.93, would alleviate their injuries. Yet, the district court dismissed the Youth's constitutional claims as nonredressable with prejudice, insulating both the statutes and Defendants' conduct from review.

The district court erroneously reasoned that Plaintiffs did not challenge "operative" sections of Utah's code and declaratory relief would therefore have no effect. R.414. However, Plaintiffs' allegations regarding Defendants' conduct demonstrate that Defendants are implementing the mandates of the challenged

provisions, showing their operative effect on Defendants' exercise of their authority – a question of fact that must be taken as true here. R.36-40 (Defendants' maximization, promotion, and systematic authorization of fossil fuel development through state planning, programs, and permitting practices). Moreover, Plaintiffs separately requested declarations that Defendants' pattern and practice of conduct is unconstitutional. R.93; *see, e.g.*, *Haygood v. Younger*, 769 F.2d 1350, 1359 (9th Cir. 1985) (en banc) (cert. den'd 478 U.S. 1020 (1986) ("a wrongful" substantive due process violation may result "from either affirmatively enacted or de facto policies, practices or customs"); *Kuchcinski*, 2019 UT 21, ¶32 (same under Utah's due process clause). Thus, Plaintiffs adequately alleged that a declaratory judgment in their favor would provide meaningful redress, whether directed at the challenged laws, Defendants' implementing conduct, or both.

The district court got the redressability inquiry backwards, reasoning that Plaintiffs did not explain how the challenged statutory provisions could be used to reduce fossil fuel development. R.414. However, the challenged provisions categorically *cannot* be used to reduce fossil fuel development; they direct Defendants to do the exact opposite, which is precisely why Plaintiffs challenge them. As detailed above, Defendants have statutory authority over state energy goals and plans, and over the approval and denial of fossil fuel development projects. *See* Statement of the Case, Section A.2; R.32-33, 36, 39. It is only the

challenged provisions that "mandate[] and direct[]" Defendants to use that authority "to administer state programs in a manner to maximize, promote, and systemically authorize the development of fossil fuels[.]" R.36.

For example, section 40-6-1 sets out the purposes of the Utah Oil and Gas Conservation Act, controlling Defendants' construction and interpretation of their statutory authority. *Clover v. Snowbird Ski Resort*, 808 P.2d 1037, 1045 (Utah 1991) (statutes are interpreted in light of express purpose). It directs Defendants in their conduct with respect to oil and gas development to "foster, encourage, and promote the development, production, and utilization" of "oil and gas" and to "authorize and to provide for the operation and development of oil and gas properties in such a manner that a greater ultimate recovery of oil and gas may be obtained[.]" R.35-36.

In ruling that this provision has no legal effect, the district court contravened clear precedent. In *Bennion v. ANR Production Co.*, this Court made clear that section 40-6-1 is a "statutory directive" and that it has actionable legal effect that binds Defendants in the exercise of their authority over oil and gas development. 819 P.2d 343, 346-47 (Utah 1991) (adjudicating claim that agency order violated section 40-6-1). Each of the other provisions Plaintiffs challenge is at least as mandatory, and under *Bennion* is a "statutory directive" binding Defendants in the exercise of their authority. For instance, section 40-10-1 sets

forth the purposes of the Utah Coal Mining and Reclamation Act and directs Defendants in their conduct with respect to coal mining operations to "insure the existence of an expanding and economically healthy" coal mining industry. Section 40-10-17 mandates that in exercising authority over the permitting of coal mining, Defendants "shall require" all "coal mining operations" to maximize coal extraction. Section 79-6-301(1)(b)(i) sets out the State's overall Energy Policy, and directs Defendants to "promote the development" of "natural gas, coal, oil, oil shale, and oil sands."[17] Discovery will also bear out the truth of these matters and Defendants' conduct in implementing these mandates.

C. The District Court's Ruling Contradicts Established Precedent Regarding the Power of Declaratory Relief

[17] The district court's ruling that the challenged provisions have no effect renders each meaningless, contrary to the canon that "every word and every provision [of a statute] is to be given effect." *Croft v. Morgan Cnty.*, 2021 UT 46, ¶32, 496 P.3d 83. It also contradicts the mandatory language of many of the provisions. Utah Code §§ 79-6-301(1)(b)(i) ("Utah shall promote the development of" fossil fuels), 40-10-17(2)(a) (Defendants "shall require" coal mining operations to "maximize" extraction of coal), 40-6-13 (Defendants "shall never" restrict "production of any pool or of any well"); *see also* §§ 79-6-301(2)(agencies "encouraged to conduct agency activities consistent with" 79-6-301(1)(b)(i)), 79-6-401 (Office of Energy Development to "implement" the "state energy policy under Section 79-6-301").

A declaratory judgment for these Youth would invalidate these unconstitutional statutory directives,[18] removing the mandates under which Defendants are causing Plaintiffs' injuries and allowing Defendants to conform their conduct to their constitutional duty to refrain from causing harm. Cooley, *Constitutional Limitations* *44 ("the result of a decision against the constitutionality of a legislative or executive act will be to render it invalid[.]"). Such a declaration would instruct Defendants that Utah's Constitution does not allow them to continue to exercise their authority in a manner to maximize, promote, and systematically authorize fossil fuel development and would require them to stop doing so, reducing fossil fuel development in Utah and the resulting emissions that are causing escalating harms to these young people. R.81-82. As the D.C.

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[18] In concluding that a declaratory judgment would not benefit these Youth—a question of fact for trial—the district court misconstrued Plaintiffs' claims and requests for relief, improperly speculating without evidence that if Utah's Oil and Gas Conservation or Coal Mining and Reclamation Acts "were declared unconstitutional," the "production of hydrocarbons would likely increase." R.416. However, Plaintiffs do not challenge these Acts in their entireties. They challenge the provisions directing Defendants to maximize, promote, and systematically authorize development. Defendants' conceded that invalidating these provisions "would not render the statute[s] unenforceable[,]" that the other "portions of the statute[s] are untouched by Plaintiffs' requested declaratory relief[,]" and that "[d]eclaring [them] unconstitutional would have no effect on" the other "provisions of the statute[s]." R.165, 167-68. Thus, Defendants' authority to control fossil fuel development would remain intact, absent the unconstitutional directives to maximize, promote, and systematically authorize development.

Circuit recently affirmed, a declaratory judgment establishes that defendants' conduct is unconstitutional and "ensures" that defendants "cannot engage in similar . . . conduct toward [plaintiffs] or anyone else in the future." *Anatol Zukerman & Charles Krause Reporting, LLC v. United States Postal Serv.*, 64 F.4th 1354, 1366-67 (D.C. Cir 2023).

The district court's conclusion that a ruling in Plaintiffs' favor would have no effect without further injunctive relief contravenes the established power of declaratory relief to provide meaningful redress for constitutional violations. As this Court has made clear, "the invalidation of unconstitutional statutes" and "declaratory judgments" are "well-recognized and effective means of protecting important constitutional rights[.]" *Spackman v. Bd. of Educ. of Box Elder Cnty. Sch. Dist.*, 2000 UT 87, ¶18, 16 P.3d 533. Declaratory relief changes the "legal status" of the challenged laws and conduct, sufficient for redressability, *Utah v. Evans*, 536 U.S. 452, 463-64 (2002), and carries a presumption that governmental officials will "abide by an authoritative interpretation" of the "constitution[.]" *Id.* (quoting *Franklin v. Massachusetts*, 505 U.S. 788, 803 (1992) (opinion of O'Connor, J.)).

Numerous courts have found that declaratory relief would provide meaningful redress in comparable cases involving government causation of climate harms. *E.g.*, *Held*, Findings of Fact, Conclusions of Law, and Order, 88-90 (evidence at trial proved redress of invalidating fossil fuel-favoring laws:

defendant agencies can alleviate the harms if they are allowed to deny permits for fossil fuel activities); *Juliana v. United States*, No. 6:15-cv-01517-AA, 2023 WL 3750334, *9 (D. Or. Jun. 1, 2023) ("Such relief would at least partially, and perhaps wholly, redress plaintiffs' ongoing injuries caused by [the] defendants' ongoing policies and practices."); *Navahine*, No. 1CCV-22-0000631 (JPC), Order Denying Defs.' Mot. to Dismiss, 10-11 ("declaratory judgment action will help resolve the parties' differing views of what" the "Constitution require[s]."); *Mathur v. His Majesty the King*, 2023 ONSC 2316, No. CV-19-00631627-0000, ¶108 (Ontario Super. Ct. Apr. 14, 2023) ("courts have the institutional competence to grant such declaratory relief."). As in these cases, a declaration of unconstitutionality here would not be produced in a vacuum. The factual record would inform a declaratory judgment and provide guidance as to the constitutional parameters governing Defendants' subsequent conduct.

As Plaintiffs' allegations demonstrate, *any* resulting reduction in fossil fuel development would meet the threshold for redressability because "[w]ith atmospheric levels of GHGs" and "air quality already at dangerous levels in Utah, every molecule of fossil fuel air pollution emissions prevented is meaningful in preventing worsening air quality and climate change harms to Youth Plaintiffs." R.42. Other courts have recognized that any such reduction is meaningful in avoiding further harm. *See, e.g.*, *Matter of Hawai'i Elec. Light Co., Inc.*, 526 P.3d 329,

344 (Haw. 2023) (Wilson, C.J., concurring) ("The remedy for violation of the right to a stable climate capable of supporting human life is discreet: to reduce greenhouse gas emissions."); *Held*, Findings of Fact, Conclusions of Law, and Order, 89; *Mathur*, 2023 ONSC 2316, ¶149 ("Every tonne of CO_2 emissions adds to global warming and leads to a quantifiable increase in global temperatures that is irreversible on human timescales.").[19]

Ultimately, the effect of the challenged provisions and of declarations of their unconstitutionality are matters for determination on a fully developed factual record. *Jenkins*, 675 P.2d at 1153. The record will bear out Defendants' conduct of maximizing, promoting, and systematically authorizing fossil fuel development consistent with the challenged statutory directives, the extent to which it is causing and contributing to Plaintiffs' injuries, and the degree to which a ruling for Plaintiffs would alleviate their worsening harms. *See, e.g.*, *Juliana*, 947 F.3d at 1168-69 (summary judgment record established triable issues of fact on government's causation of plaintiffs' climate injuries); *Held*, No. CDV-2020-307, Order on Mot. for Sum. J., 12 (Mont. 1st Jud. Dist. Ct. May 23, 2023) ("Based on the

[19] Contrary to the district court, neither *Chernaik v. Brown*, 475 P.3d 68 (Or. 2020), nor *Aji P.*, 480 P.3d 438, rejected that declaratory relief can provide meaningful redress of climate harms. Moreover, neither case challenged the constitutionality of statutes directing fossil fuel development.

pleadings and discovery, there appears to be a reasonably close causal relationship between the State's permitting of fossil fuel activities under MEPA, GHG emissions, climate change, and Plaintiffs' alleged injuries."). At this early stage, Plaintiffs' allegations are to be taken as true and are sufficient to allow them an opportunity to present evidence to prove their claims.[20]

III. The Youth's Factual Allegations State Claims Under Utah's Constitution that Should Be Decided on a Full Evidentiary Record

A. There Is No Exception to Utah's Inalienable Rights and Due Process Protections for Fossil Fuels

In dismissing the youth's claims with prejudice, the district court ruled that "due process does not apply to fossil fuels policy," foreclosing any conceivable due process claim involving fossil fuels, regardless of the facts involved or the harms to life, liberty, or property alleged. R.416.[21] The district court determined

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[20] At minimum, it was error for the district court to dismiss with prejudice on standing and political question grounds where Plaintiffs requested an opportunity to amend the complaint if their allegations were deficient in any respect. R.210; Utah R. Civ. P. 41(b) (jurisdictional dismissal is not "on the merits"); *Cheek v. Iron Cnty. Att'y*, 2019 UT 50, ¶16, 448 P.3d 1236 (jurisdictional dismissal is not "on the merits" and therefore not "with prejudice"); *Carlton v. Brown*, 2014 UT 6, ¶33, 323 P.3d 571 (justiciability defects may be cured through amended pleadings and leave to amend shall be freely granted).

[21] The district court did not address article I, section 1. The district court should not have reached the scope of due process after concluding it lacked jurisdiction. *Utah Transit Auth. v. Loc. 382 of the Amalgamated Transit Union,* 2012 UT 75, ¶19, 289 P.3d 582.

that the rights to life, liberty, and property do not apply because it concluded, incorrectly, that "[t]here is no precedent" for applying due process to statutes governing fossil fuel development. R.416. By the district court's reasoning, courts may foreclose entire areas of legislative and executive policies from constitutional review simply because the alleged facts and claims raise issues of first impression. However, there is ample case law applying due process to fossil fuel policies and nothing in Utah's Constitution exempts fossil fuels from the explicitly protected rights to life, liberty, and property, which provide broadly applicable principles of protection.

Neither Defendants nor the district court contested that Utah's Constitution provides fundamental rights against government policies and conduct that substantially reduce children's lifespans and endanger their health and safety, as demonstrated by the original public meaning, history, and traditions underlying Utah's inalienable rights and due process protections. *See* Section III.B. The district court's conclusion that these Youth cannot invoke these fundamental protections because the method of governmental interference involves fossil fuels, "misunderstand[s] the way [courts] apply constitutional guarantees. The Utah Constitution enshrines principles, not application of those principles." *Maese*, 2019 UT 58, ¶70 n.23; Utah Const. art. I, § 27. Stated differently, the

applicability of the rights to life and liberty is not limited by the "particular form of governmental interference[.]" *Adoption of K.T.B.*, 2020 UT 51, ¶52.[22]

This Court has repeatedly affirmed that Utah's rights to life and liberty were intended to provide broad protections applicable to all manner of situations and policy areas, including new and changing circumstances not yet addressed by Utah's courts:

> The fundamental interests of "life, liberty, and property" . . . were to be protected as societal and jurisprudential concepts of those terms evolved. For the law to freeze the meaning of those clauses as of one point in time would be to deny the essential meaning and purpose

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[22] The district court distinguished *Held v. Montana*, (*see* note 14, *supra*), on the basis that Montana's Constitution provides an express right to a clean and healthful environment not included in Utah's. R.411. However, in addition to claims under Montana's "clean and healthful environment" right, the *Held* plaintiffs also claimed their state's fossil fuel policy violated rights to health and safety – justiciable claims that advanced to and were resolved favorably at trial. *Held*, Order on Mot. for Sum. J., 26 (advancing claims); *Held*, Findings of Fact, Conclusions of Law, and Order, 92-93, 101-02 (declaring fossil fuel-favoring laws as violating fundamental right to a stable climate system, as protected by rights to health and safety; rights to health and safety hinged on whether climate was degraded). Youth Plaintiffs here similarly claim violations of their explicitly protected right to life and their right to freedom from substantial government endangerment, a traditional liberty interest with deep historical roots. That the source of harm to the Youth's life and liberty involves environmental degradation does not limit the applicability or justiciability of Utah's explicit inalienable rights and due process protections, nor transform Plaintiffs' well-pleaded claims into assertions of a right to a healthy environment. *Adoption of K.T.B.*, 2020 UT 51, ¶52 (mischaracterizing due process claim as seeking a right to be "free from a particular form of governmental interference" would cause the Court to "overlook the substantial [constitutional] interest at the heart of this case").

> that was built into those clauses by the broad, expansive language that the Constitution uses.

DeBry, 889 P.2d at 435; *see also McGrew v. Indus. Comm'n*, 85 P.2d 608, 610 (Utah 1938). Since statehood, this Court has understood that Utah's constitutional rights were intended for adaptability for "future operation," *People v. City Council of Salt Lake City*, 64 P. 460, 462-63 (Utah 1900), and that courts have a "duty" to "safeguard the rights of the individual . . . *from whatever source*." *Holtgreve*, 200 P. at 900 (emphasis added); *see also Ritchie*, 47 P. at 676 (Bartch, J., concurring).

Not only is the district court's conclusion that "due process does not apply to fossil fuels policy" contrary to the very nature of constitutional rights—elevating a fuel source above human life—the premise that "[c]ourts have uniformly concluded" so is manifestly false, as demonstrated by the very cases on which the district court relied. R.416. Most importantly, in *Bennion*, this Court adjudicated a claim that a provision of the Utah Oil and Gas Conservation Act violated substantive due process. 819 P.2d at 347-49. Similarly, in *Exxon Corp. v. Governor of Maryland*, the U.S. Supreme Court adjudicated a claim that a statute governing fossil fuels violated substantive due process. 437 U.S. 117, 124 (1978). In *Wildgrass Oil & Gas Committee*, the court resolved a substantive due process challenge to a provision of Colorado's Oil and Gas Conservation Act. 447

F.Supp.3d at 1068. As these cases demonstrate,[23] there is no exception to due process rights for issues involving fossil fuels.

B. The Youth's Claims Are Supported in the Text, History, and Traditions of Utah's Constitution and Should Be Decided on a Full Factual Record

Plaintiffs' claims are grounded in the principle that inalienable rights and due process protections are "limitation[s] on the State's power to act" that "forbid[] the State itself to deprive individuals of life, liberty, or property[.]" *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 195 (1989); *Utah Sch. Bds. Ass'n*, 2001 UT 2, ¶11 ("The Utah Constitution is not one of grant, but one of limitation."). Consistent with this principle, Plaintiffs assert two separate claims

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[23] None of the other cases the district court relied on supports its conclusion that due process does not apply to fossil fuels. At most, in applying rational basis review to challenges based on financial harms, the cases on which the court relied show there is no fundamental right to economic activity based on fossil fuels. None says anything about the fundamental rights at issue here or what level of scrutiny applies to them. All but one involved harm solely to economic interests. *Exxon Corp.*, 437 U.S. at 122 n.5 (claiming irrationality); *Bullseye Glass Co. v. Brown*, 366 F.Supp.3d 1190 (D. Or. 2019); *E. Enterprises v. Apfel*, 524 U.S. 498 (1998). The exception, *Wildgrass Oil & Gas Committee*, ruled that a statute did not force political cooperation as alleged. 447 F.Supp.3d. at 1068. None involved claimed infringements of or alleged harm to life, health, or safety. "[C]ourts will exercise stricter scrutiny over measures which encroach on civil liberties than those which affect economic situations[.]" *Allen v. Trueman*, 110 P.2d 355, 365 (Utah 1941) (Wolfe, J., concurring). *Bullseye Glass* did not even involve fossil fuels, 366 F.Supp.3d 1190, and *Eastern Enterprises* concerned retirement benefits, not fossil fuel policy. 524 U.S. 498.

challenging statutory provisions and government conduct for *affirmatively*: (1) substantially reducing their lifespans and the number of healthy years in their lives in violation of their fundamental right to life, R.82-86; and (2) harming them in violation of their fundamental right to be free from substantial government endangerment of their health and safety. R.86-91.

The fundamental principles underlying Plaintiffs' claims are well-grounded in deeply-rooted and explicit protections in Utah's Constitution. The plain text and common usage of the terms during the ratification era, and the history and traditions underlying Utah's inalienable rights and due process protections demonstrate that, under their original public meaning, the rights to "life" and "liberty" encompass protection from the harms Plaintiffs are experiencing. If Utah's Constitution does not protect the life and health of children from harm knowingly and affirmatively caused by their government[24] as a matter of official policy, Utah's Declaration of Rights is a dead letter.

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[24] Contrary to the district court, these Youth do not assert that due process requires the State to "protect against private actors." R.417. The district court's reasoning that third parties, and not Defendants, are causing and contributing to the Youth's injuries, R.417, directly contradicts Plaintiffs' factual allegations, which are to be taken as true, and the conclusions of courts in comparable cases. *E.g., Juliana*, 947 F.3d at 1166, 1167 (9th Cir. 2020) (record established that the

1. The Plain Text and Original Public Meaning of Utah's Inalienable Rights and Due Process Provisions Protect Against Government Policies and Conduct That Substantially Reduce a Person's Lifespan

The right to life explicitly protected by article I, sections 1 and 7 is the "most fundamental" right under Utah's Constitution. *State v. Phillips*, 540 P.2d 936, 940 (Utah 1975), *disavowed on other grounds*, *State v. Taylor*, 664 P.2d 439 (Utah 1983). The "word[] *'life,'*" is a "constitutional term[], and" is "to be taken in [its] broadest sense." *McGrew*, 85 P.2d at 610. Even narrowly construed, the right to life protects against government policies and conduct that affirmatively and substantially reduce a person's lifespan.

As reflected in period dictionaries,[25] the common understanding of "life" at ratification of Utah's Constitution, as today, encompassed the entirety of a person's lifespan. Universal Dictionary of the English Language (Robert Hunter

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federal government affirmatively contributes to climate change by "promot[ing] fossil fuel use in a host of ways," including permits for fuel extraction); *Held*, Order on Mot. to Dismiss, 7-12 (allegations demonstrated that State Energy Policy contributed to youth's climate injuries). Moreover, Defendants did not dispute the sufficiency of the allegations demonstrating that the challenged policies and conduct are causing Plaintiffs' harms, *see* Section II, which is a matter for determination on the evidence.

[25] *Maese*, 2019 UT 58, ¶18 ("When we interpret constitutional language, we start with the meaning of the text as understood when it was adopted."); *State v. Canton*, 2013 UT 44, ¶13, 308 P.3d 517 (the "'starting point' is the dictionary.").

& Charles Morris eds., N.Y.C., Peter Fenelon Collier 1899) (defining "life" as "the period from birth to death" of a human being, *i.e.*, a person's longevity or lifespan); *accord* Webster's American Dictionary of the English Language (Chauncey A. Goodrich ed., 1895) (defining "life" as "the tie from birth to death"); *see also Summit Water Distrib. Co. v. Utah State Tax Comm'n*, 2011 UT 43, ¶14, 259 P.3d 1055 (interpreting Utah's Constitution by these dictionaries). A corpus linguistics analysis further indicates that, while the term had several usages then, as now, the public at the time of ratification understood and commonly used the word "life" to refer to a person's longevity.[26] Thus, the "plain import of" the term "as it would be understood by persons of ordinary intelligence and experience," demonstrates that Utah's explicit constitutional protection of the right to "life" guards Plaintiffs against the significant diminishment of their lifespans from Defendants' conduct and policies. *Ohms*, 881 P.2d at 850 n.14.

2. The Plain Text and Original Public Meaning of Utah's Inalienable Rights and Due Process Provisions Protect Against Government Policies and Conduct That Substantially Harm or Endanger a Person's Health and Safety

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[26] Corpus of Historical American English, https://www.english-corpora.org/coha (analysis of randomized samples of 1000 results each for the years 1880, 1890, and 1900 for the search term "life" indicated the term was commonly used to refer to a person's lifespan); *Salt Lake City Corp. v. Haik*, 2020 UT 29, ¶23 n.29, 466 P.3d 178 (providing guidance on use of corpus linguistics).

The right to life similarly protects against government policies and conduct that affirmatively and substantially reduce the number of healthy years in a person's life or substantially harm or endanger their health and safety. Period dictionary definitions from the ratification era illustrate that historical understanding of the term "life" also encompassed a person's "vitality," demonstrating that protections of the right to life extend not just to the number of years in a person's lifespan, but to their health. Webster's American Dictionary of the English Language (Chauncey A. Goodrich ed., 1895) (defining "life" as "vitality"). Corpus linguistics further illustrate that the public at ratification also commonly used the word "life" to refer to a person's health and vitality.[27] "The framers of the Constitution, and the people who adopted it, must be understood to have employed" the word in this "natural sense, and to have understood what they meant." Cooley, *Constitutional Limitations* *58.

That Utah's Constitution protects against substantial harm and endangerment to health and safety is further illustrated by the plain text of article I, section 1. "By its terms," this provision "prohibits government from infringing

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[27] Corpus of Historical American English, https://www.english-corpora.org/coha (analysis of randomized samples of 1000 results each for the years 1880, 1890, and 1900 for the search term "life" indicated the term was commonly used to refer to a person's health and vitality).

upon citizens' 'inherent and inalienable' right[]'" to "enjoy" life. *Cunningham*, 2011 UT 17, ¶62. In *Ray v. Wal-Mart Stores, Inc.*, this Court described the "inalienable right to enjoy and defend [one's] li[fe]" under section 1 as an "unqualified right" and explained that this provision evinces a clear expression of preservation and protection of human life that is "so substantial and fundamental that there can be virtually no question as to [its] importance[.]" 2015 UT 83, ¶¶19, 22, 24, 359 P.3d 614. In *Cunningham*, this Court ruled that the protections afforded by section 1 are self-executing and enforceable, meaning that section 1 "articulates a rule sufficient to give effect to the underlying rights and duties intended by the framers." 2011 UT 17, ¶¶59-62; *see also Ritholz v. City of Salt Lake*, 284 P.2d 702 (Utah 1955) (invalidating ordinance as violating article I, section 1). Here, the plain language of section 1 provides that the "inalienable" right to life encompasses the right to "enjoy" life. By common experience in 1896, no less than today, significant diminishment of a person's health and safety substantially impairs their ability to "enjoy" life. Article I, section 26, "rivets" these protections "into the

fundamental law of the State and makes them enforceable in a court of law." *Berry*, 717 P.2d at 676.[28]

That the generation who ratified Utah's Constitution's understood the protections afforded to "life" to encompass a person's health and safety is further illustrated by the opinions and writings of jurists of sibling courts prior to Utah's statehood. James Wilson, signatory to the Declaration of Independence and original U.S. Supreme Court Justice, taught that "[by] the law, life is protected not only from immediate destruction, but from every degree of actual violence, and, in some cases, from every degree of danger." Lectures on the Law (1790-91), *reprinted in* 2 Collected Works of James Wilson, 1068. In 1876, Stephen Johnson Field, the second-longest serving U.S. Supreme Court Justice, wrote that "[b]y the term 'life' as used [in the due process clause], something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed." *Munn v. Illinois*, 94 U.S. 113, 142 (1876) (Field, J., dissenting). Similarly, in 1878, New York's highest court made clear that

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[28] At minimum, article I, section 1 informs a cross-textual analysis with article I, section 7 because both "provisions deal[] generally with the same topic" – protection of the right to life. *In re Worthen*, 926 P.2d 853, 866-67 (Utah 1996); *see also West v. Thomson Newspapers*, 872 P.2d 999, 1015 (Utah 1994) (interpreting article I, sections 1 and 15 together); Cooley, *Constitutional Limitations* *57-58 ("effect is to be given" to "the whole instrument, and to every section and clause").

"[t]he right to life may be invaded, without its destruction" and "includes the right of the individual to his body in its completeness and without dismemberment." *Berthold v. O'Reilly*, 74 N.Y. 509, 515 (1878).

3. Protection from Substantial Harm and Endangerment of Health and Safety Is Deeply Rooted in the Lineage of Utah's Life and Liberty Provisions

The right to be free from substantial endangerment of health and safety is deeply rooted in the history underlying article I, sections 1 and 7 and "so fundamental to our society and so basic to our constitutional order" that it is implicit in the concept of ordered liberty. *In re J.P.*, 648 P.2d 1364, 1375 (Utah 1982). Utah's protections of life and liberty trace their lineage to Chapter 29 of the Magna Carta, through Sir Edward Coke's Institutes of the Laws of England and Blackstone's Commentaries, both of which were foundational to the Framers. *Berry*, 717 P.2d at 674; Cooley, *Constitutional Limitations* *351. Citing Coke, Blackstone traced to the Magna Carta the "absolute rights" of persons, first among which is "personal security" which consists in a "person's legal and uninterrupted enjoyment of his life, his limbs, his body, his *health*," including "preservation of" a person's "health from such practices as may prejudice or annoy it." 1 William Blackstone, Commentaries on the Laws of England 123, 125 (emphasis added); *Union Pac. Ry. Co.*, 21 P. at 995 (tracing life and liberty protections to the Magna Carta, through Coke). John Locke, whose work was likewise foundational to the

Framers, wrote that "health" is included among a person's inalienable natural rights. John Locke, Second Treatise of Government 2.6 (1690). The generation who adopted Utah's Constitution "transplanted" these absolute rights from these "legal source[s]" into Utah's due process and inalienable rights protections, bringing "the old soil with [them]." *Matter of Childers-Gray*, 2021 UT 13, ¶50. Thus, the "well-understood" meaning of the absolute rights of individuals as encompassing protection of health and safety is one the people of Utah "must be supposed to have had in view in adopting them." Cooley, *Constitutional Limitations* *59.

4. Multiple Lines of Constitutional Case Law Illustrate the Fundamental Right to Freedom from Substantial Harm and Endangerment of Health and Safety

The fundamental right to be free from substantial government endangerment of one's health and safety is supported in multiple lines of constitutional case law. In interpreting the federal Constitution's due process guarantees,[29] the United States Supreme Court has long recognized fundamental liberty interests in bodily integrity, *e.g.*, *Rochin v. California*, 342 U.S. 165 (1952), and personal security, *e.g.*, *Ingraham v. Wright*, 430 U.S. 651 (1977). In *Youngberg*

[29] Notably, this Court has recognized that Utah's "state constitutional provisions [may] afford more rights than the federal Constitution" even where "substantially the same" language is used. *Cunningham*, 2011 UT 17, ¶46.

v. Romeo, the Court explicitly "recognized that there is a constitutionally protected liberty interest in safety" because "personal security constitutes a 'historic liberty interest' protected substantively by the Due Process Clause." 457 U.S. 307, 315, 318 (1982) (quoting *Ingraham,* 430 U.S. at 673). "Every violation of a person's bodily integrity is an invasion of his or her liberty. The invasion is particularly invasive[,]" as here, where "it creates a substantial risk of permanent injury and premature death." *Washington v. Harper,* 494 U.S. 210, 237 (1990) (Stevens, J., concurring).[30]

Similarly, this Court has recognized that Utah's Constitution provides "legal protection [for] a person's bodily integrity[,]" *Malan v. Lewis,* 693 P.2d 661, 674 n.17 (Utah 1983), and that "[a]mong the historic liberties" is "a right to be free from, and to obtain judicial relief for, unjustified intrusions on personal security." *Berry,* 717 P.2d at 680 (quoting *Ingraham,* 430 U.S. at 673). In *Wickman v. Fisher,*

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[30] The fundamental protection of health and safety under constitutional rights is also reflected in federal precedent outside of the due process context. The U.S. Supreme Court has made clear that a "crucial factor in analyzing" the constitutionality of a search or seizure under the Fourth Amendment is "the extent to which" it may "threaten the safety or health of the individual." *Winston v. Lee,* 470 U.S. 753, 761 (1985). Likewise, in the Eighth Amendment context, in *Helling v. McKinney,* the Court recognized that "reasonable safety" is a "basic human need[]" and ruled that Nevada's subjection of an inmate to smoky conditions that posed a "risk of serious damage to his future health" violated his constitutional rights. 509 U.S. 25, 33, 35 (1993).

this Court ruled that government policies that subject a person to conditions "inimical to the maintenance of the[ir] health" and safety, including, as applicable here, lack of fresh air and safe temperatures, raise "serious constitutional issues" under Utah's due process clause. 629 P.2d 896, 898, 901 (Utah 1981). Though *Wickman* involved conditions of confinement, the principles are equally applicable here, where Defendants are causing and contributing to conditions dangerous to Plaintiffs' health and safety that require them to remain indoors and from which they cannot physically escape. R.9-31, 43, 48. Indeed, this Court indicated in *Wickman* that these principles apply with greater force here, where there is no penal justification for imposing such conditions on Utah's youth. 629 P.2d at 901 ("a jail door does not close off all protections of" the "Utah Constitution[]" and "neither is incarceration a justification for dissolving the protection" of "the due process clause[]"). The myriad cases recognizing a right not to be subject to government endangerment of health and safety in conditions of confinement are at least equally applicable, if not more so, outside of the prison context where innocent children are victims of government harm from which they cannot escape. *Youngberg*, 457 U.S. at 315-16 ("if it is" unconstitutional "to hold convicted criminals in unsafe conditions, it must be unconstitutional" to subject those "who may not be punished at all" to such "unsafe conditions").

5. Application of Scrutiny in Cases Involving Other Recognized Fundamental Rights Demonstrates the Primacy of the Fundamental Right to Be Free from Substantial Endangerment of Health and Safety

The primacy of the fundamental right to health and safety is also evident in cases in which the protection of health and safety overrides other fundamentally protected constitutional rights. For example, in *Cunningham*, this Court ruled that other fundamental constitutional interests "must yield" to "protecting the health" of children and that this "is especially the case where a child's life is endangered." 2011 UT 17, ¶¶73-74. This Court recently reaffirmed this principle in *Kingston v. Kingston*, again ruling that other fundamental rights can be overridden to prevent substantial harm to children. 2022 UT 43. The principle that the preservation of health and safety is paramount to other constitutional rights dates back to statehood. In 1896, this Court held that "the state can only be permitted to limit or abridge" a "fundamental right" if "necessary to *promote* the health" and "safety of society or the public." *Holden*, 46 P. at 761 (emphasis added).[31]

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[31] U.S. Supreme Court precedent is in accordance. *See, e.g.*, *Riggins v. Nevada*, 504 U.S. 127, 135 (1992) (government "would have satisfied due process if" it had shown treatment with antipsychotic medication was "essential for the sake of [petitioner's] own safety or the safety of others"); *Branzburg v. Hayes*, 408 U.S. 665, 700 (1972); *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 521 (1989) (Scalia, J., concurring).

6. Utah's Common Law and Historical Code Further Demonstrate the Deep Roots of the Fundamental Right to Freedom from Substantial Government Endangerment of Health and Safety

The deep roots of Utah's constitutional protections of health and safety are also evident in Utah's common law and statutory history. "[C]onstitutions are to be construed in light of the common law[.]" Cooley, *Constitutional* Limitations *60. Under Utah's common law, causes of action have long been available to vindicate individual injuries to personal health and safety through actions in nuisance, negligence, intentional torts, and products liability. Indeed, Utah's Open Courts clause explicitly provides that "every person, for an injury done to the person in his or her *person* . . . shall have remedy by due course of law[.]" Utah Cons. art. I, § 11 (emphasis added).

Since Utah's early history, the State has similarly provided express statutory protections of health and safety, providing "evidence about what the people of Utah would have understood our state constitution to mean." *Maese*, 2019 UT 58, ¶46. As early as 1870, Utah law provided a private right of action against "anything which is injurious to health[.]" Acts, Resolutions, & Mem'ls of the Terr. of Utah, § 8-2-249 (1870). Statutory protections only became more developed by 1898, when

Utah established its first code as a state, including both civil rights of action[32] and criminal penalties[33] for harms to health, and safety. An 1899 statute provided:

> Whatever is dangerous to human life or health, and whatever renders soil, air, water, or food impure or unwholesome, are declared to be nuisances and to be illegal, and every person, either owner, agent, or occupant, having aided in creating or contributing to the same, or who may support, continue, or retain any of them, shall be deemed guilty of a misdemeanor.

Comp. Laws 1907, § 1113x; Laws of Utah (1899), p. 66.

In early Utah case law, nuisance protections were used regularly to protect against the harms of pollution, including from fossil fuels. *See Kinsman v. Utah Gas & Coke Co.,* 177 P. 418, 418-19 (Utah 1918) (permitting nuisance suit against gas plant where the "air [was] polluted and made poisonous to such an extent" as to "cause sickness, such as nausea, headache, etc."); *Wasatch Oil Refining Co. v. Wade,* 63 P.2d 1070 (Utah 1936) (permitting nuisance suit against oil refinery);

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[32] Comp. Laws 1898, § 3506 ("Anything which is injurious to health . . . so as to interfere with the comfortable enjoyment of life . . . is a nuisance, and the subject of an action. Such action may be brought by any person . . . whose personal enjoyment is lessened by the nuisance[.]").

[33] Comp. Laws 1898, § 4275 ("A public nuisance is a crime" consisting "in unlawfully doing any act, or omitting to perform any duty, which act or omission either: 1. Annoys, injures, or endangers the comfort, repose, health, or safety of three or more persons;" or "[i]n any way renders three or more persons insecure in life[.]"); *id.* § 4277 (public nuisance is a misdemeanor); *id.* § 4156 ("If two or more persons conspire" to "commit any act injurious to the public health" they "are punishable by imprisonment[.]").

Ludlow v. Colo. Animal By-Prod. Co., 137 P.2d 347, 350 (Utah 1943) ("unwholesome smoke, gases, vapors, and stenches" from "the rendering of carcasses"). Utah's early nuisance cases continue a long line, dating back to as early as 1611, protecting against harms to health and safety from pollution. *Aldred v. Benton*, 77 Eng. Rep. 816, 820-21 (1611) ("for stopping of the wholesome air" an "action lies"); *see also, e.g.*, *Ross v. Butler,* 19 N.J. Eq. 294, 299-300 (N.J. Ch. 1868) (a person "is entitled to have an unpolluted and untainted atmosphere, meaning by 'unpolluted' and 'untainted,'" air "not rendered incompatible with the physical comfort of human existence") (cleaned up). The protections of nuisance under Utah's code have endured to the present, and with some minor changes in language, continue to focus on protection against harm to life, health, and safety. *See* Utah Code § 78B-6-1101.

7. The Deep Roots of the Fundamental Right to Freedom from Substantial Endangerment of Health and Safety Are Reflected in the Well-Established Principle that Protection of Health and Safety is the Primary Purpose for Which Governments Exist

As this Court has recognized, a right is fundamental where its protection is "one of the basic principles for which organized government is established." *In re J.P.*, 648 P.2d at 1373. Here, the fundamental right to health and safety is supported by authorities dating back to Roman times recognizing that its protection is the primary purpose for which government exists. Two thousand

years ago, Cicero, one of history's first legal scholars, gave us the Latin phrase "*salus populi suprema lex esto,*" which means "the safety of the community is the highest law." Gilmer, Cochran's Law Lexicon 265 (5th ed. 1973); *see also Keith v. Clark*, 97 U.S. 454, 460 (1878) ("Cicero and subsequent public jurists define a State to be a body political or society of men united together for the purpose of promoting their mutual safety"); *Obergefell v. Hodges*, 576 U.S. 644, 657 (2015) (citing Cicero for deep roots of fundamental right to marry); *Caetano v. Massachusetts*, 577 U.S. 411, 421 (2016) (Alito, Thomas, JJ., concurring) ("A State's most basic responsibility is to keep its people safe."). During the proceedings of the Utah Constitutional Convention, delegate Varian, a prominent lawyer, acknowledged "the principle that the public safety is the supreme law[.]" *Proceedings,* Day 31. This Court echoed Mr. Varian the year of statehood, *Holden*, 46 P. at 761 ("Solus populi supremalex"), and in *Olsen v. Hayden Holding Company*, made clear that it "is the universally recognized right of the community in all civilized governments" to "be protected" against "impairment or imperilment" of "health" and "safety[,]" – "a protection which the government not only has a right to vouchsafe to the citizens, but which it is its duty to extend in the exercise of its police power." 70 P.2d 463, 465 (Utah 1937). Sound reason, supported by constitutional history, dictates that when government betrays its primary

purpose by *actively* endangering the lives, health, and safety of children, it violates their rights. Certainly, such endangerment is not beyond judicial review.

CONCLUSION

The text of Utah's Constitution, its history, and this Court's longstanding precedent demonstrate that Plaintiffs' allegations state claims squarely within judicial cognizance and well within the scope of Utah's constitutional protections of life and liberty. As the Youth allege, every day that Defendants continue to maximize, promote, and systematically authorize fossil fuel development brings further, escalating harms to their lives, health, and safety. R.30-31, 42. Where government conduct is alleged to substantially harm the health and safety of politically powerless children, surely Utah's Constitution cannot be read to be silent, nor to preclude the most central of judicial duties — constitutional review. The important constitutional questions presented here should be decided on a full factual record, not disposed of on a motion to dismiss. Plaintiffs respectfully request that this Court reverse the district court and remand so they may have an opportunity to present evidence to prove their claims.

DATED this 19th day of September, 2023.

/s/ *Andrew L. Welle*
Andrew L. Welle, *pro hac vice*
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CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This brief contains 15,999 words, excluding the parts of the brief exempted by Utah Rule of Appellate Procedure 24(g)(2), in compliance with this Court's September 5, 2023 Order allowing principal briefs of up to 16,000 words.
2. This brief has been prepared in a proportionately spaced typeface using Microsoft Word in 13-point Source Serif Pro font in compliance with the typeface requirements of Utah Rule of Appellate Procedure 27(a).
3. This brief contains no non-public information and complies with Utah Rule of Appellate Procedure 21(h) regarding public and non-public filings.

DATED this 19th day of September, 2023.

/s/ *Andrew L. Welle*

CERTIFICATE OF SERVICE

I certify that on this 19th day of September, 2023, I caused to be served via email a true and correct copy of the foregoing **Brief of Appellants** to the following at the email addresses listed below:

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ADDENDUM A

Complaint for Declaratory Relief, March 15, 2022 R.1-94

[ATTACHED]

If you do not respond to this document within applicable time limits, judgment could be entered against you as requested.

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IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

NATALIE R., a minor, by and through her guardian, DANIELLE ROUSSEL; SEDONA M., a minor, by and through her guardian, CREED MURDOCK; OTIS W., a minor, by and through his guardian, PAUL WICKELSON; LYDIA M., a minor, by and through her guardian, HEATHER MAY; LOLA MALDONADO; EMI S., a minor, by and through her guardian, DAVID GARBETT; and DALLIN R., a minor, by and through his guardian, KYLE RIMA, *Plaintiffs*, vs. STATE OF UTAH; SPENCER COX, Governor of the State of Utah, in his official capacity; DEPARTMENT OF NATURAL RESOURCES, OFFICE OF	**COMPLAINT FOR DECLARATORY RELIEF** Tier II Case No. Judge

ENERGY DEVELOPMENT; THOM CARTER, Energy Advisor and Executive Director of Department of Natural Resources, Office of Energy Development, in his official capacity; DEPARTMENT OF NATURAL RESOURCES, BOARD OF OIL, GAS, AND MINING; DEPARTMENT OF NATURAL RESOURCES, DIVISION OF OIL, GAS, AND MINING; JOHN R. BAZA, Director of Department of Natural Resources, Division of Oil, Gas, and Mining, in his official capacity, *Defendants*.	

* * *

COMPLAINT FOR DECLARATORY RELIEF

1. Natalie R., by and through her guardian, Danielle Roussel; Sedona M., by and through her guardian, Creed Murdock; Otis W., by and through his guardian, Paul Wickelson; Lydia M., by and through her guardian Heather May; Lola Maldonado; Emi S., by and through her guardian, David Garbett; and Dallin R., by and through his guardian Kyle Rima (collectively, "**Youth Plaintiffs**"), bring this action for declaratory relief pursuant to Utah's Declaratory Judgment Act, Utah Code § 78B-6-401, *et seq.*, against the State of Utah; Spencer Cox, in his official capacity as Governor of the State of Utah; the Department of Natural Resources, Office of Energy Development; Thom Carter, in his official capacity as Energy Advisor and Executive Director of the Utah Department of Natural Resources, Office of Energy Development; the Utah Department of Natural Resources, Board of Oil, Gas, and Mining; the Utah Department of Natural Resources, Division of Oil, Gas, and Mining; and John R. Baza, in his official capacity as the Director of the Utah Department of Natural Resources, Division of Oil, Gas, and Mining (collectively, "**Defendants**").

I. INTRODUCTION

2. The past and continuing development of Utah's fossil fuels presents an existential threat to Utah's youth. Because of the development and combustion of fossil fuels, Utah has the worst average air quality of any state in the nation and is already experiencing profoundly dangerous climate changes, including increasing temperatures and deadly heat waves, increasingly frequent and severe wildfires and wildfire smoke,

exceptional drought, exacerbation of medical conditions and health risks, and other harms. Dangerous air quality and climate change in Utah are already harming the health and safety of Utah's youth, interfering with their healthy development, and taking years off of their lives. Yet, despite the dangers of Utah's critical air quality and climate emergencies to its youth, Utah's government continues to throw fuel on the fire, maximizing, promoting, and systematically authorizing fossil fuel development in the state as a matter of official state policy, codified in statute. Utah Code §§ 79-6-301(1)(b)(i), 40-10-1(1), 40-10-17(2)(a), 40-6-1, 40-6-13. By and through these unconstitutional statutory provisions, and Defendants' systematic actions in carrying them out, Utah's government is affirmatively harming the health and safety of Utah's youth and substantially reducing their lifespans, violating their rights under Utah's Constitution, and necessitating judicial relief.

3. Youth Plaintiffs are children and youth in Utah, between the ages of 9 and 18, who have been and continue to be seriously harmed by the dangerous air pollution and extraordinary climate changes caused and exacerbated by Defendants' express statutory policy and actions in maximizing, promoting, and systematically authorizing fossil fuel development in Utah. The harms and threats posed to Youth Plaintiffs by Defendants' statutory policy and actions are existential, harming life and the foundation of life, and rise to the level of constitutional rights violations.

4. As children and youth, because of their unique physical and developmental vulnerabilities, age, and generational characteristics, Youth Plaintiffs are

uniquely vulnerable to and disproportionately harmed by air pollution and the climate crisis. Youth Plaintiffs, most of whom cannot vote, are politically and economically powerless to change Utah's statutory policy and actions that are causing dangerous air pollution and climate change. Faced with injuries they have no other means to redress, Youth Plaintiffs need judicial relief to protect their rights.

5. For decades, Defendants have known and acknowledged in official reports that the development and combustion of fossil fuels cause dangerous air pollution and climate change, harming and threatening the health, safety, and wellbeing of Utah's youth.

6. Knowing of the dangers, Defendants have actively caused and continue to cause and worsen the air quality and climate crises in Utah. Defendants have engaged in a longstanding and ongoing unconstitutional pattern and practice of maximizing, promoting, and systematically authorizing fossil fuel development in Utah. The State officially codified its unconstitutional policy to maximize, promote, and systematically authorize the development of fossil fuels through its coal program in 1979, Utah Code §§ 40-10-1(1), 40-10-17(2)(a), and through its oil and gas program in 1983, Utah Code §§ 40-6-1, 40-6-13. In 2006, in the midst of Utah's already critical air pollution and climate crises, the State enacted another unconstitutional statute cementing the State's policy to "promote the development" of "natural gas, coal, oil, oil shale, and oil sands[.]" Utah Code § 79-6-301(1)(b)(i). These statutory provisions constitute the "State's Fossil Fuel Development Policy" or "Defendants' Fossil Fuel Development Policy".

Plaintiffs challenge these laws and Defendants' historic and ongoing conduct in implementing them as unconstitutional.

7. Defendants' Fossil Fuel Development Policy is facially unconstitutional. With Utah's air quality and climate crises presenting an existential threat to the lives, health, and safety of Utah's youth, there is no set of circumstances in which statutory provisions directing the maximization, promotion, and systematic authorization of fossil fuel development can be constitutional.

8. In carrying out the State's Fossil Fuel Development Policy, Defendants are responsible for significant levels of dangerous air pollution that have caused, and are causing, dangerous air quality and climate change in Utah, endangering Youth Plaintiffs' health and safety, and substantially reducing their lifespans.

9. Youth Plaintiffs seek declarations that, by substantially reducing their lifespans and endangering their health and safety, the State's Fossil Fuel Development Policy, and Defendants' maximization, promotion, and systematic authorization of fossil fuels pursuant thereto, violates their rights under Article I, sections 1 and 7 of the Utah Constitution to life and to be free from government conduct that substantially endangers their health and safety.

10. Given the dire emergency of the air quality and climate crises in Utah and Defendants' ongoing causation and contributions thereto through the State's Fossil Fuel Development Policy, Plaintiffs also respectfully plea that they be granted a swift hearing on their claims and of their evidence. Utah

R. Civ. P. 57 ("The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.").

II. JURISDICTION AND VENUE

11. This Court has original jurisdiction over this action pursuant to Article VIII, section 5 and Article I, section 11 of the Utah Constitution and Utah Code section 78A-5-102(2).

12. This Court has the power to grant declaratory and equitable relief pursuant Utah's Declaratory Judgment Act, Utah Code § 78B-6-401, *et seq.*, as well as the general equitable powers of this Court.

13. Venue in this action is proper in this Court under Utah Code section 78B-3-307.

III. PLAINTIFFS

14. Plaintiff **Natalie R.**, by and through her guardian Danielle Roussel, is fifteen years old and resides in Salt Lake City, Utah.

15. Because of air pollution and increasing wildfires resulting from the development and combustion of fossil fuels, Natalie is frequently exposed to dangerous air quality throughout the year, harming her physical and mental health and safety, her ability to enjoy her life, and substantially reducing her lifespan. Due to unsafe air quality, Natalie has often had to wear a mask just to go outside. When Natalie is exposed to unsafe air quality, she often experiences physical symptoms, including painful headaches. In 2020, there was a wildfire close to Natalie's home that caused air quality in her area to go over 500 on the air quality index for multiple

days. She has often experienced such poor air quality that she has been unable to see down her own street and has had to stay indoors for her own health and safety, preventing her from physical and social activities necessary for her health, safety, and development. Air quality is often so dangerous that her school will require her and her friends to stay indoors.

16. Natalie has been and is being harmed by the increasing temperatures and heatwaves in Utah resulting from climate change. She increasingly has to stay inside for her own safety because of dangerously high temperatures, preventing her from activities necessary for her health and development.

17. Natalie has been and is being harmed by drought conditions in Utah resulting from climate change. Decreased snowfall, decreased snowpack, decreased precipitation, and warming temperatures are diminishing water sources that provide water for Natalie's family and her community, threatening their water security.

18. Natalie's ability to safely recreate and obtain exercise for her own health and development is also being harmed. Natalie is a member of her school's track and cross country team and has had numerous practices and competitions cancelled because it has been too dangerous for her and her teammates to even be outside during the unsafe air quality and extreme heat. When Natalie has to run for practice or events in Utah's elevated temperatures, she experiences dizziness and often feels like she is going to pass out. Natalie has enjoyed skiing since she was five. In the ten years that Natalie has been skiing she has witnessed the ski season become shorter due to the lack of snow. Her ability to safely enjoy and obtain exercise and

recreation through track, cross country, and skiing has been and is being reduced and threatened by air pollution, increasing temperatures, decreasing snowfall, diminished snowpack, and the shortened ski season resulting from climate change. Natalie and her family also have a cabin near Flathead Lake, Montana where they go for summer vacations. Natalie's ability to safely recreate and enjoy the property and surrounding areas has been harmed by wildfire smoke. On several occasions, Natalie and her family have had to leave Montana early due to the dangerous wildfire smoke. Even out of state, Natalie is unable to escape the dangerous air quality that Defendants' Fossil Fuel Development Policy contributes to and makes worse.

19. Natalie's mental health also suffers as a result of air pollution and climate change. Every day Natalie experiences stress and anxiety because of the harms she is experiencing from continuing fossil fuel development and combustion and because of what the increasing dangers from continuing emissions will mean for her and her future. With air pollution frequently at unsafe levels throughout the year in Utah, Natalie often experiences dread just thinking about going outside. Natalie experiences stress and anxiety knowing that climate change will continue to harm her health and safety and affect all of the major decisions in her life, like where she can live to try to minimize the harms to her health and safety. She experiences cognitive impairment because of the climate crisis and feels that she can't do anything, even an activity as simple as using water to brush her teeth, without being reminded of the climate crisis. Natalie wants to have a family

but experiences stress and anxiety about the safety of the world for her and her potential children because of climate change.

20. Natalie has been actively involved in climate advocacy since June 2020, when she began striking over climate change at the Utah State Capitol, striking alone for six months before she was joined by other youth advocates. Natalie has now attended Friday climate strikes for over 70 Fridays. Natalie talks to everyone she can about climate change and the necessity of reducing atmospheric GHGs and emissions. She speaks at climate rallies, and has helped to organize numerous climate advocacy events. To reduce air pollution and try to reduce the harms of climate change, Natalie eats a vegan diet, strives to purchase only used goods, conserves water, and strives for her household to be zero waste. However, Natalie cannot reduce the harms she is suffering from dangerous air quality and climate change as long as Defendants continue to implement their Fossil Fuel Development Policy.

21. Plaintiff **Sedona M.**, by and through her guardian Creed Murdock, is seventeen years old and resides in Park City, Utah.

22. Sedona is often exposed to dangerous air quality in Utah because of air pollution and increasing wildfires resulting from the development and combustion of fossil fuels, harming her physical and mental health and safety, her ability to enjoy her life, and substantially reducing her lifespan. Sedona has suffered from asthma her whole life and was diagnosed when she was just a one-year-old living in Salt Lake City. When she was a baby, Sedona had to be treated with nebulizers several times a week, and often

several times a day, to help prevent life-threatening asthma attacks in Utah's dangerous air quality. She often had to be treated with steroids to control her asthma in the hazardous air conditions, and by the time she was three, she needed steroids daily. Because of Utah's dangerous air quality, Sedona was often unable to go outside during preschool. She still often has to stay indoors for her own health and safety because of hazardous air quality in Utah, preventing her from activities necessary for her own health and development. Utah's unsafe air quality poses such a danger to Sedona that, when she was three and a half years old, she and her family had to move to higher elevation on her doctor's recommendations just to reduce her exposure. Sedona takes daily prescribed medication and carries a prescription inhaler to help control her asthma. When Sedona is exposed to dangerous air quality, she experiences pain in her chest and lungs, difficulty breathing, and coughing, and it can trigger life-threatening asthma attacks.

23. Increasingly frequent and severe wildfires brought on by climate change are harming Sedona. Wildfire smoke conditions are becoming increasingly prevalent in Utah, frequently exposing Sedona to dangerous air quality and endangering her life, health, safety, and development. The dangerous air quality resulting from wildfires exacerbates Sedona's asthma, often and increasingly requiring her to remain indoors for her own safety. In 2021, Sedona's family had to be evacuated because a nearby wildfire threatened her home and made it unsafe to be in the area. Sedona's school had to cancel classes for several days because of the fire, disrupting her education and development.

24. Sedona has been and is being harmed by the increasing temperatures and heatwaves in Utah resulting from climate change. Because of increasing temperatures, Sedona often and increasingly must remain indoors for her own health and safety and is prevented from engaging in activities necessary for her health, safety, and development. Sedona's home does not have air conditioning and increasingly frequent days and prolonged periods of extreme heat have caused her home to get so hot at times that it activates the fire alarms, threatening her health and safety even within her own home. Trees in Sedona's yard are dying from increased beetle predation, drought, and higher temperatures brought on by climate change, presenting a fire hazard and danger that limbs or an entire tree could fall and hurt Sedona or her home. Several trees in Sedona's yard that provided shade for her home have already died from increased beetle predation, drought, and higher temperatures brought on by climate change, and several more trees die each year, causing economic harm, making Sedona's home hotter, and increasing the dangers to her of rising temperatures and heatwaves.

25. Loss of snow accumulation, decreased snowpack, decreased precipitation, and warming temperatures resulting from climate change are diminishing water sources for Sedona's family and her community, threatening their water security.

26. Sedona's ability to safely recreate, access the outdoors, and obtain exercise as necessary for her own physical and mental health and development is being harmed by air pollution and climate change. Sedona enjoys hiking,

climbing, rafting, biking, and skiing for the exercise she needs for her health and development. However, dangerous air quality and climate change are making it increasingly unsafe for Sedona to even be outdoors. Sedona has often had, and increasingly has, to forego, change, or cancel plans for outdoor activities because of dangerously high temperatures and wildfire smoke. When she is able to participate in outdoor activities, they are becoming increasingly dangerous because of unsafe air quality and climate change. Sedona has been and is increasingly being exposed to dangerous smoke conditions while camping, hiking, and rafting. Areas she cares about and has recreated in have already been destroyed by wildfires and she has even been on trips where she has had to pass by or through active wildfires. Drought conditions are diminishing Utah's water sources and making it increasingly difficult for Sedona to access and utilize Utah's water bodies for swimming, rafting, and fishing. Increasing temperatures, lack of snow, increased winter rain, and shortening winters are reducing Sedona's ability to ski and participate in other winter snow activities and resulting in increasing icy and hazardous conditions that are making them more dangerous.

27. Sedona's mental health and development also suffers as a result of air pollution and climate change. She experiences stress and anxiety because of the harms to her health that she has already suffered from Utah's dangerous air quality and because of the further dangers to her physical health from continuing exposure to Utah's dangerous air quality. She also experiences stress and anxiety because of what continuing fossil fuel development means for her future. Watching the lack of winter snow,

Sedona experiences stress and anxiety knowing that it will worsen Utah's drought and contribute to summer wildfires and smoke conditions dangerous to her health and safety. Sedona's home has already been subject to evacuation orders for wildfires and she has witnessed wildfires first hand, causing her stress and anxiety for her safety and the safety of her loved ones.

28. To reduce air pollution and help the climate, Sedona and her family reduce their vehicle miles, drive a hybrid vehicle, carpool, and use public transportation and biking for transportation as much as possible. However, Sedona's efforts will not reduce the injuries she is suffering and will suffer as long as Defendants continue to implement their Fossil Fuel Development Policy.

29. Plaintiff **Otis W.**, by and through his guardian Paul Wickelson, is twelve years old and resides in Salt Lake City, Utah.

30. Because of air pollution and increasing wildfires resulting from the development and combustion of fossil fuels, Otis is frequently exposed to dangerous air quality throughout the year in Utah, harming his physical and mental health and safety, his ability to enjoy his life, and substantially reducing his lifespan. As a result of the dangerous air quality in Utah, Otis experiences painful headaches. The air quality is often so dangerous that Otis must remain inside for his own safety, preventing access to the outdoors and exercise he needs for his health and development. Due to dangerous air quality, Otis has often had days where his school has not allowed him or his peers to go outside.

31. Otis rides his bike for fun and exercise, and as much as possible for transportation to avoid creating additional pollution, including the three miles to and three miles back from his school. However, because of the dangerous air quality in Utah resulting from fossil fuel development and combustion, Otis is often exposed to dangerous air quality while biking and it's often unsafe for him to even ride his bike.

32. Increasingly intense rain events brought on by climate change are resulting in flooding and water intrusion in Otis's home, threatening his shelter and presenting a risk of dangerous mold growth. During intense rain events, water has frequently leaked into Otis's basement and has even resulted in flooding over a foot deep, causing damage and economic harm. Flooding from an intense rain event also damaged the local library Otis relies on for learning, socializing, and community events, resulting in its closure for four years, harming his educational and social development.

33. Decreased snowfall, decreased snowpack, decreased precipitation, and warming temperatures are diminishing water sources that provide water for Otis's family and his community, threatening their water security. Because of drought brought on by climate change, Otis and his family have received notices from their community government advising them to decrease their water use. Trees in Otis's yard are dying from the drought and increased temperatures, presenting a danger that limbs or an entire tree could fall and hurt Otis or his home. Several trees in Otis's yard that provided shade for his home have already died from increased heat and drought conditions, making Otis's home, which does not have air

conditioning, hotter and increasing the dangers to him of rising temperatures and heatwaves.

34. Increasing heatwaves, wildfires, and wildfire smoke are making it increasingly dangerous for Otis to camp, backpack, raft, and hike because he could be caught or trapped in conditions in which it is unsafe to even be outdoors. He and his family have had to cancel, change, and cut trips short because wildfires and wildfire smoke made the trips hazardous to Otis's health.

35. Otis enjoys skiing on Utah's famous slopes. However, warming temperatures, decreased snowfall and snowpack, and shortening winters mean that Otis is, and increasingly will be, able to ski less often and may not be able to ski at all in the future. When Otis is able to go skiing, conditions are often icy or patchy as climate change increases rain-on-snow events and thaws before subsequent freezes, making it more dangerous and difficult for Otis to get exercise he needs for his health and development.

36. Otis's mental health and development also suffers as a result of air pollution and climate change. Otis experiences stress and anxiety because of the increasing dangers of the worsening climate crisis. Otis has friends and family members who have had to evacuate from wildfires and whose homes have burned down in wildfires, causing Otis stress and anxiety for his safety and the safety of his loved ones. In 2021, Otis's grandparents had to evacuate their home, where he frequently visits, when a wildfire destroyed homes as near as three blocks away.

37. To reduce air pollution and help the climate, Otis rides his bike and the bus for transportation and eats a vegetarian diet. However, Otis's efforts will not reduce the injuries he is suffering and will suffer as long as Defendants continue to implement their Fossil Fuel Development Policy. Only Utah's Courts can provide the timely relief Otis needs to reduce the harms to his life, health, and safety resulting from Defendants' Fossil Fuel Development Policy.

38. Plaintiff **Lydia M.**, by and through her guardian Heather May, is sixteen years old and resides in Salt Lake City, Utah.

39. Because of air pollution and increasing wildfires resulting from the development and combustion of fossil fuels, Lydia is exposed to dangerous air quality throughout the year in Utah, harming her physical and mental health and safety, her ability to enjoy her life, and substantially reducing her lifespan. When Lydia is exposed to unsafe air quality, she often experiences pain in her sinuses and throat, painful migraines, and fatigue. Due to dangerous air quality, Lydia has had days where her school has not allowed her or her peers to go outside. The air quality has often been so dangerous that Lydia has had to remain indoors, preventing her from engaging in physical and social activities necessary for her health, safety, and development.

40. Lydia often hikes in the hills near her neighborhood and throughout the state for her physical and mental health. However, increasing temperatures, wildfires, wildfire smoke, and air pollution resulting from fossil fuel development and combustion are making it increasingly unsafe

for Lydia to even be outdoors without risking respiratory illness or heat sickness. Areas that Lydia cares about and used to hike have already been destroyed by wildfires.

41. Decreased snowfall, decreased snowpack, decreased precipitation, and warming temperatures are diminishing water sources that provide water for Lydia's family, threatening their water security.

42. Because of drought conditions brought on by climate change, in the 2019-2020 season, Lydia's rowing team had its practices cancelled and its season ended early, preventing Lydia from partaking in an activity she relied on for her physical, mental, and social health and development.

43. Lydia experiences stress and anxiety every day because of the injuries she is already experiencing from continuing fossil fuel development and combustion and because of what the increasing dangers from continuing emissions will mean for her ability to live a healthy life. With the threats to her health, safety, and future mounting with every day of continuing fossil fuel development and combustion, and her government continuing to promote fossil fuels, Lydia often experiences overwhelming dread and hopelessness and is unable to focus on just living her life as a teenager. Because of the dangers of climate change, Lydia feels she has no determination or autonomy over her own future. She experiences stress and anxiety because every major decision in her life will be affected by climate change, including where she can live to try to preserve her safety and whether to have children. Lydia wants to have a family but experiences anxiety about the safety of the world for her and her potential children

because of climate change. She doesn't want to put children into peril by bringing them into a world that isn't safe for them.

44. To reduce air pollution and try to reduce the harms of climate change, Lydia often eats a vegetarian or low-meat diet, strives to purchase only used goods, conserves water, and her family has installed solar panels and drives an electric car. However, Lydia cannot reduce the injuries she is suffering from dangerous air quality and climate change as long as Defendants continue to implement their Fossil Fuel Development Policy.

45. Plaintiff **Lola Maldonado** is eighteen years old and resides in Salt Lake City, Utah.

46. Because of air pollution and increasing wildfires resulting from the development and combustion of fossil fuels, Lola is exposed to dangerous air quality throughout the year in Utah, harming her physical and mental health and safety, her ability to enjoy her life, and substantially reducing her lifespan. Lola experiences physical pain and difficulty breathing when she is exposed to unsafe air quality in Utah. Lola has suffered from vocal cord dysfunction, a condition associated with exposure to dangerous air quality in which her vocal cords would seize up, making it difficult for her to breathe and speak and causing coughing spells, sometimes to the point of vomiting. Because of unsafe air quality, Lola often has to avoid going outside entirely for her own safety, preventing her from physical and social activities necessary for her health and development. The air quality is often so dangerous that she has to wear a mask outdoors.

47. Lola has been and is being harmed by the increasing temperatures and heatwaves in Utah resulting from climate change. As a result of the

dangerously high temperatures, Lola has often had to remain indoors for her own safety and has been unable to participate in activities that are crucial for her health and development.

48. Loss of snow accumulation, decreased snowpack, decreased precipitation, and warming temperatures resulting from climate change are diminishing water sources for Lola's family and her community, threatening their water security.

49. Lola's ability to safely obtain exercise necessary for her physical and mental health and development has been and is being harmed by dangerous air quality and climate change in Utah. Lola enjoys going on walks with her family and is an avid hiker, runner, mountain biker, rollerblader, and participant in her school's track and cross country teams. Air pollution, wildfire smoke, and increasing temperatures are making it increasingly dangerous for Lola to engage in these activities. When she is exposed to dangerous air quality during outdoor activities, Lola experiences pain in her chest and lungs, coughing, nausea, and difficulty breathing. Her track and cross country teams have often been unable to practice outdoors and have had to cancel practices because of dangerous air quality. When she is exposed to high temperatures during outdoor activities, Lola experiences faintness, dizziness, weakness, and heat exhaustion. Lola's track and cross country teams have to have ambulances present during events because of the dangers from the heat and, when she has to compete in the heat, Lola has collapsed at the finish line on several occasions. Her track and cross country teams often have to cancel practices or move practices to early

hours throughout the season because of the extreme heat. Last year, the biggest preseason event of Lola's cross country season had to be cancelled because high temperatures made it too dangerous. Lola has also had biking team practices cancelled because of the dangerous high temperatures. She is increasingly exposed to wildfire smoke while hiking and has had to modify and cancel hiking trips because of wildfire smoke.

50. Lola also enjoys cross-country and alpine skiing to exercise for her health and development. Increasing temperatures, lack of snow, increased winter rain, and shortening winters are reducing Lola's ability to engage in these activities and resulting in increasing icy and hazardous conditions that are making them more dangerous. Lola has already suffered physical injuries skiing in dangerous conditions resulting from warming temperatures.

51. Lola is suffering harms to her mental health because of air pollution and climate change. She experiences stress and anxiety because of the injuries she is already experiencing and because of what continuing fossil fuel development will mean for her future. Knowing that her health is suffering, that it is increasingly unsafe for her to go outside, and that her lifespan is being reduced by Utah's unsafe air quality causes Lola stress and anxiety. She also experiences stress and anxiety that Utah's dangerous air quality will trigger her vocal cord dysfunction. Lola also experiences stress and anxiety knowing that climate change will continue to worsen, harming her ability to access the outdoors and safely maintain her health, and affecting major decisions in her life, like having a family. She experiences stress and anxiety because she wants to have a family but has known, since she first

learned about climate change in the fifth grade, that she will not have her own kids because continuing greenhouse gas ("GHG") emissions will increasingly threaten her safety and the safety of any children she would bring into the world.

52. Lola has been a committed advocate for climate and air quality justice in Utah since she was in the fifth grade. She started an environmental club at her high school; helped develop a resolution for her school district to transition to renewable energy; works on her school district's sustainability taskforce, recycling committee, and farm to school committee; is active in Utah Youth Environmental Solutions; and tries to reduce her own impact by driving less, eating a mostly plant-based diet, and reducing energy usage. However, Lola knows that her efforts will not reduce the injuries she is suffering to her health and safety as long as Defendants continue to implement their Fossil Fuel Development Policy.

53. Plaintiff **Emi S.**, by and through her guardian David Garbett, is nine years old and resides in South Salt Lake, Utah.

54. Because of air pollution and increasing wildfires resulting from the development and combustion of fossil fuels, Emi is frequently exposed to dangerous air quality throughout the year in Utah, harming her physical health and safety, her ability to enjoy her life, and substantially reducing her lifespan. When Emi is exposed to unsafe air quality, she experiences difficulty breathing. The air quality in Utah is often so dangerous that Emi must remain inside for her own safety, preventing access to the outdoors and exercise that she needs for her physical and mental health and

development. Due to dangerous air quality, Emi has often had days where she and her peers have not been allowed to go outside at school.

55. Emi enjoys playing outside and roller skating, hiking, camping, and rafting with her family, but increasing temperatures and heatwaves, wildfires, and wildfire smoke are making it increasingly dangerous for Emi to even be outdoors. Emi has been and is increasingly exposed to wildfire smoke, including while playing outside, camping, and hiking. Because of dangerous conditions brought on by the development and combustion of fossil fuels, Emi and her family often have to daily assess Emi's ability to safely engage in outdoor activities, and often have to keep Emi indoors or change or cancel plans because of wildfire smoke, air pollution, and increasing temperatures. During periods of dangerous air quality, Emi and her family have often had to seek higher elevation to try to reduce Emi's exposure to unsafe air quality.

56. Loss of snow accumulation, decreased snowpack, decreased precipitation, and warming temperatures are diminishing water sources for Emi's family and her community, threatening their water security.

57. Emi and her sister often visit the creek behind her mother's home and dip their feet in the water for relief from Utah's increasingly hot summer temperatures, but because of drought brought on by climate change, the creek is disappearing in the summer and was reduced to only a trickle in the Summer of 2021.

58. Since she was five, Emi has enjoyed skiing to obtain exercise she needs for her physical and mental health and development. She tries to ski as often

as she can with her family and as a member of her ski team. However, increasing temperatures, lack of snow, increased winter rain, and shortening winters brought on by fossil fuel development and combustion mean that Emi is able to go skiing increasingly less often and may not be able to ski at all in the future. When Emi is able to go skiing, climate change is increasingly resulting in icy, patchy, and other hazardous conditions that are making it more dangerous and difficult for Emi to get the exercise she needs for her health and development. Emi also enjoys sledding, but because of lack of snow, she is increasingly unable to go sledding in Utah's disappearing winters.

59. Emi's mental health and development also suffers as a result of dangerous air quality and climate change. Even though Emi is only nine, she already worries for her current health and her future because of Utah's unsafe air quality and worsening climate change. Emi experiences worry and sadness because she knows that, if climate change continues, there will be no more cold winters when she is older, and that the world may become too hot for humans to live in. Emi experiences worry and sadness that she may not be able to ski at all in the near future because of climate change. Emi cares deeply for animals and she also worries and experiences sadness for the health and safety of animals because of the worsening climate crisis. Emi loves playing and being outdoors, and she experiences sadness when air pollution, increasing temperatures, and wildfire smoke brought on by the development and combustion of fossil fuels force her to stay indoors.

60. Emi often thinks about how climate change and dangerous air quality are harming her and she wants to do everything she can to prevent them from worsening. Emi and her cousin have even started planning a book about how climate change is harming human and animal health. However, Emi's efforts will not reduce the injuries she is suffering and will suffer as long as Defendants continue to implement their Fossil Fuel Development Policy. Only Utah's Courts can provide the timely relief Emi needs to reduce the harms to her life, health, and safety resulting from Defendants' Fossil Fuel Development Policy.

61. Plaintiff **Dallin R.**, by and through his guardian Kyle Rima, is seventeen years old and resides in Riverton, Utah.

62. Because of air pollution and increasing wildfires resulting from the development and combustion of fossil fuels, Dallin is exposed to dangerous air quality in Utah throughout the year. Air pollution in Utah significantly harms Dallin's physical and mental health and safety, his ability to enjoy his life, and is substantially reducing his lifespan. Dallin experiences respiratory distress, shortness of breath, pain, and difficulty breathing because of dangerous air quality in Utah resulting from pollution from fossil fuel development and combustion, and from smoke from the increased prevalence of wildfires brought on by climate change. Because of unsafe air quality, Dallin often has to avoid going outside entirely for his own safety, preventing him from physical and social activities necessary for his health, safety, and development. He has been prescribed inhalers because of the respiratory symptoms he experiences due to unsafe air

quality. In 2020, Dallin experienced respiratory symptoms exacerbated by dangerous air quality so severe that he was immobile for a month, unable to walk ten feet without feeling sick and losing his breath. During the academic year, his school has required him and his peers to stay indoors for lunch and recreation periods due to unsafe air quality.

63. Dallin has been and is being harmed by the increasing temperatures and heatwaves in Utah resulting from climate change. In 2020, Dallin experienced a dangerous heatwave in Riverton that lasted a week, for which excessive heat advisories were issued. Dallin again experienced a dangerous heatwave in Riverton in June of 2021. As a result of dangerously high temperatures, Dallin increasingly has to remain indoors for his own safety and is unable to participate in outdoor activities that are crucial for his health and development.

64. Loss of snow accumulation, decreased snowpack, decreased precipitation, and warming temperatures resulting from climate change are diminishing water sources for Dallin's family and his community, threatening their water security.

65. Dallin is harmed by the lengthening and worsening pollen season resulting from climate change because he experiences seasonal allergies that are becoming more severe each year and that cause him to experience inflammation and redness in his eyes, congestion, and sneezing. Dallin has to take allergy medication to relieve his symptoms almost every day in the spring and summer.

66. Dallin's ability to safely recreate and obtain exercise necessary for his own health and development is being harmed by air pollution and climate change. He has long been an avid participant in outdoor sports and has worked as a soccer and baseball referee. When Dallin spends time outdoors or participates in sports and outdoor activities, he often experiences pain and difficulty breathing because of dangerous air quality. Dallin has had practices and games in which he would have played cancelled because of unsafe air quality and has had games for which he would have refereed cancelled because of unsafe air quality, resulting in loss of income. Dallin and his family go camping every year in Utah and have seen and been exposed to wildfire smoke in areas where they vacation, have been prevented from accessing waterways in Utah because of dangerous algal blooms, and have even had to cancel vacation plans because of wildfires and wildfire smoke.

67. Dallin's mental health also suffers as a result of air pollution and climate change. He experiences stress and anxiety because of the injuries he is already experiencing from fossil fuel development and combustion and because of what continuing GHG emissions will mean for his future and his safety. The climate crisis weighs on him so much that he often experiences cognitive impairment, finding it difficult to think about other things. Communities near Dallin's home and the homes of his family members in Utah have already received wildfire evacuation notices, causing Dallin additional stress and anxiety for his own safety and the safety of his loved ones. Even though he wants to stay in Utah, get married, and start a family, Dallin experiences frequent stress and anxiety about where he will be able

to live to minimize injuries from climate change and whether it will be safe to bring additional children into a world in which they too will be threatened by the worsening climate crisis.

68. Dallin is committed to climate advocacy, has been active in extracurricular activities through his high school that focus on climate change, and – when it is safe enough for him go outside without experiencing adverse health effects from heat, pollen, and air pollution – often carpools, walks, or rides his bike for transportation to reduce air pollution. However, Dallin knows that his efforts will not reduce the injuries he is suffering and will suffer as long as Defendants continue to implement their Fossil Fuel Development Policy. Dallin has always dreamed of running for office to try to address the worsening climate crisis, but knows that, with continuing emissions resulting from Defendants' Fossil Fuel Development Policy, by the time he could run for office it would be too late to avert many of the worst near- and long-term harms of the climate crisis. Only Utah's Courts can provide the timely relief he needs to reduce the harms to his life, health, and safety resulting from Defendants' Fossil Fuel Development Policy.

69. As described above, Youth Plaintiffs are actively being harmed in uniquely individualized and particular ways by Defendants' Fossil Fuel Development Policy and the resulting dangerous air quality and climate change. Youth Plaintiffs are harmed physically by Defendants' Fossil Fuel Development Policy. Youth Plaintiffs are harmed psychologically, mentally, and emotionally by Defendants' Fossil Fuel Development Policy. Youth Plaintiffs are also injured because Defendants continue to harm them and

put them at greater risk of even more physical and mental health harm than they already experience by continuing to implement their Fossil Fuel Development Policy, worsening Utah's already critical air quality and climate crises. Defendants' Fossil Fuel Development Policy places Youth Plaintiffs at great risk of sustaining additional irreversible physical and mental health harms.

70. Defendants' Fossil Fuel Development Policy worsens each Youth Plaintiff's individual injuries each year. The dangerous air pollution and climate changes underlying Youth Plaintiffs' injuries, and consequently, Youth Plaintiffs' injuries, will increase with additional air pollution resulting from the development and combustion of fossil fuels pursuant to Defendants' Fossil Fuel Development Policy. Youth Plaintiffs will continue to suffer similar and additional injuries with additional emissions resulting from the development and combustion of fossil fuels pursuant to Defendants' Fossil Fuel Development Policy.

71. Defendants' Fossil Fuel Development Policy hastens the irreversibility and worsening of Youth Plaintiffs' existing injuries and that hastening, in and of itself, is an injury to Youth Plaintiffs. Another separate injury to each Youth Plaintiff is the deprivation of their ability to act in their own interest to preserve the window of opportunity to prevent irreversible and inevitable worsening injury going forward. The opportunity to prevent irreversible and inevitable worsening injuries to Youth Plaintiffs is still available now and is being progressively foreclosed by Defendants' ongoing implementation of their Fossil Fuel Development Policy.

IV. DEFENDANTS

72. Defendant **State of Utah** has jurisdiction over all natural resources within its domain, including the atmosphere (air), water, public lands, minerals, and fish and wildlife. The State of Utah, through its legislature and governor, codified the State's Fossil Fuel Development Policy to maximize, promote, and authorize the development of fossil fuels in Utah Code sections 79-6-301(1)(b)(i), 40-10-1(1), 40-10-17(2)(a), 40-6-1, and 40-6-13.

73. Defendant **Spencer Cox** is the **Governor of the State of Utah** and is sued in his official capacity. The Governor sets energy and mineral development goals and objectives for the State, Utah Code § 79-6-401(3)(b)(ii), and has review and approval power over comprehensive planning for the development and conservation of the state's natural resources. Utah Code § 79-2-202(4)(a), (b).

74. Defendant **Department of Natural Resources, Office of Energy Development ("OED")** is the State's primary source for advancing energy and mineral development in the state. Utah Code § 79-6-401(3)(a). OED implements state policy to promote the development of natural gas, coal, oil, oil shale, and oil sands, and the governor's energy and mineral development goals and objectives. Utah Code §§ 79-6-401(3)(b)(i), 79-6-301(1)(b).

75. Defendant **Thom Carter** is the **Energy Advisor** and **Executive Director of OED** and is sued in his official capacity. The Energy Advisor advises the governor on energy-related matters, annually reviews and proposes updates to the state's energy policy, and promotes, as the governor

considers necessary, the development of renewable and nonrenewable energy resources. Utah Code § 79-6-201(2)(a)-(c)(i). The Energy Advisor coordinates across state agencies to assure consistency with state energy policy and coordinates energy-related regulatory processes within the state. Utah Code § 79-6-201(2)(d), (g).

76. Defendants **Board of Oil, Gas, and Mining ("BOGM")** and **Division of Oil, Gas, and Mining ("DOGM")**, are respectively a regulatory board and division within the Department of Natural Resources ("DNR"). BOGM and DOGM respectively regulate and implement regulation of the exploration for and development of coal, oil, gas, and other fossil fuels in the State of Utah. BOGM's and DOGM's authority over fossil fuel development extends to all lands in the State of Utah, including lands of the United States or the lands subject to the jurisdiction of the United States. Utah Code §§ 40-6-18, 40-10-2(1).

77. Defendant **John R. Baza**, is the **Director of DOGM** and is sued in his official capacity. Utah Code § 40-6-15.

V. FACTUAL BACKGROUND

A. DEFENDANTS' UNCONSTITUTIONAL FOSSIL FUEL DEVELOPMENT POLICY

i. Defendants' Unconstitutional Fossil Fuel Development Policy Causes Dangerous Levels of Air Pollution, Harming Youth Plaintiffs

78. Defendants' Fossil Fuel Development Policy is codified in the following statutory provisions, each of which directs the maximization, promotion,

and systematic authorization of fossil fuel development in Utah, causing the dangerous air pollution harming Youth Plaintiffs:

a. In 1979, the State codified its Fossil Fuel Development Policy to maximize, promote, and systematically authorize the development of fossil fuels in two provisions of the Utah Coal Mining and Reclamation Act. Utah Code §§ 40-10-1(1), 40-10-17(2)(a). Section 40-10-1 calls for the maximization, promotion, and systematic authorization of coal development, directing BOGM and DOGM to "insure the existence of an expanding and economically healthy underground coal mining industry."

b. Similarly, section 40-10-17(2)(a) calls for the maximization, promotion, and systematic authorization of coal development in Utah by requiring that any permit issued under the Utah Coal Mining and Reclamation Act shall require operations to "[c]onduct surface coal mining operations so as to maximize" the amount of coal recovered.[1]

c. In 1983, the State further codified its Fossil Fuel Development Policy to maximize, promote, and systematically authorize the development of fossil fuels in two provisions of the Utah Oil and Gas

[1] The provisions of the Utah Coal Mining and Reclamation Act "relating to permits . . . and enforcement . . . [are] applicable to" surface coal mining as well as "surface operations and surface impacts incident to an underground coal mine with those modifications to the permit application requirements, permit approval or denial procedures, and bond requirements as are necessary to accommodate the distinct difference between surface and underground coal mining methods." Utah Code § 40-10-18.2.

Conservation Act. Utah Code §§ 40-6-1, 40-6-13. Section 40-6-1 calls for the maximization, promotion, and systematic authorization of oil and gas development, directing BOGM and DOGM "to foster, encourage, and promote the development, production, and utilization" of "oil and gas[,]" and to "authorize and to provide for the operation and development of oil and gas properties in such a manner that a greater ultimate recovery of oil and gas may be obtained . . . ."

d. Section 40-6-13 further directs BOGM and DOGM to maximize, promote, and systematically authorize the development of oil and gas, stating that the Utah Oil and Gas Conservation Act "shall never be construed to require, permit or authorize the board or any court to make, enter or enforce any order, rule, regulation, or judgment requiring restriction of production of any pool or of any well . . . to an amount less than the well or pool can produce[.]"[2]

e. In 2006, in a provision of the Utah Energy Act, the State enacted yet another law solidifying its Fossil Fuel Development Policy to maximize, promote, and systematically authorize the development of fossil fuels and expanding it to include oil shale and oil sands, declaring that it "is the policy of the state" to "promote the

[2] Consistent with the direction in Utah Code §§ 40-6-1 and 40-6-13, BOGM has interpreted its directive and promulgated rules "to realize the greatest ultimate recovery of oil and gas[,]" R649-2-1, and declared that "[i]t is the policy of [DOGM] to promote the development of any mineral resources on land under its jurisdiction." R649-3-27(2).

development" of "natural gas, coal, oil, oil shale, and oil sands[.]" Utah Code § 79-6-301(1)(b)(i).

79. Each statutory provision codifying the State's Fossil Fuel Development Policy mandates or directs Defendants to administer state programs in a manner to maximize, promote, and systematically authorize the development of fossil fuels in Utah. These policy mandates have resulted in and are resulting in fossil fuel development, combustion, and ensuing air pollution that is endangering the lives, health, and safety of Youth Plaintiffs.

ii. Defendants' Conduct to Maximize, Promote, and Systematically Authorize the Development of Fossil Fuels Causes Dangerous Levels of Air Pollution that Harm and Threaten Youth Plaintiffs

80. In implementing the State's Fossil Fuel Development Policy, and prior to its codification, as a matter of de facto policy, Defendants have historically engaged and continue to engage in an ongoing pattern and practice of maximizing, promoting, and systematically authorizing the development of fossil fuels by engaging in conduct that includes, but is not limited to, the following:

a. Defendants Coordinate State Energy Policy and Develop and Implement State Goals, Objectives, Programs and Energy Plans to Maximize and Promote the Development of Fossil Fuels

81. Pursuant to the State's Fossil Fuel Development Policy, Defendants coordinate state energy policy and develop and implement state goals, objectives, programs, and energy plans to maximize and promote fossil fuel development in Utah. For example:

a. The Governor and his predecessors have developed, and the Governor develops energy and mineral development goals and objectives, and comprehensive plans for the State to maximize and promote the development of fossil fuels in Utah;

b. OED develops energy plans for the State to maximize and promote the development of fossil fuels in Utah;

c. OED promotes energy and mineral development workforce initiatives to maximize and promote the development of fossil fuels in Utah;

d. OED supports research initiatives to maximize and promote the development of fossil fuels in Utah;

e. OED seeks funding for, participates in federal programs to advance, and administers federally funded state fossil fuel energy programs to maximize and promote the development of fossil fuels in Utah;

f. The Energy Advisor coordinates across state agencies and coordinates energy-related regulatory processes to maximize and promote the development of fossil fuels in Utah;

g. The Energy Advisor advocates before federal and local authorities for energy-related infrastructure projects to maximize and promote the development of fossil fuels in Utah;

h. In recommending energy-related executive or legislative actions the Energy Advisor considers beneficial to the state, including updates to the state's energy policy, as contained in section 79-6-301, on

information and belief, Defendant Energy Advisor has never proposed any actions or updates to reduce the development of fossil fuels in Utah.[3]

i. The State of Utah brings and OED works to support legal challenges to regulatory programs and initiatives that would reduce fossil fuel development in Utah.

82. Defendants' coordination of state energy policy and program development, and development and implementation of state goals, objectives, and plans to maximize and promote the development of fossil fuels facilitates, leads to, and increases the amount of fossil fuel development in Utah, and the ensuing air pollution that is harming and endangering the lives, health, and safety of Youth Plaintiffs.

b. Defendants Regulate and Systematically Authorize Permits for the Development of Fossil Fuels in Utah

83. Defendants BOGM and DOGM implement regulatory programs that carry out the unconstitutional statutes of the State's Fossil Fuel Development Policy.

84. BOGM and DOGM have engaged in a historical and ongoing pattern and practice of regulating and systematically authorizing permits for the development of fossil fuels in Utah, causing dangerous air pollution that is harming Youth Plaintiffs.

[3] Utah Code Section 79-6-203(2)(d) gives the Energy Advisor authority to recommend "any energy-related or legislative action the energy advisor considers beneficial to the state" including updates to Section 79-6-301.

85. With limited exceptions,[4] no extraction of fossil fuels can lawfully occur in Utah without a permit from DOGM.

86. Present annual oil production in Utah has more than doubled since 2003. Between 1960 and November 2021, DOGM and its predecessors authorized operations that cumulatively produced approximately 1,709,140,620 barrels of crude oil in Utah.

87. Present annual natural gas production in Utah has nearly quadrupled since 1960. Between 1960 and November 2021, DOGM and its predecessors authorized operations that cumulatively produced approximately 14,386,078,152,000 cubic feet of natural gas, or 14,386,078,152 MCF.[5]

88. Present annual coal production in Utah has roughly tripled since 1960. Between 1960 and 2020, DOGM and its predecessors authorized operations that cumulatively produced approximately 931,247,641 short tons of coal in Utah. In 2008, Utah produced its one-billionth ton of coal.

89. Fossil fuel development operations authorized by DOGM continue to emit air pollution and produce fossil fuels that, when combusted, result in additional air pollution.

90. Defendants' historic and ongoing systematic authorization of fossil fuel development in Utah has cumulatively resulted in and continues to cause

[4] Permits are not required for "the extraction of coal by a landowner for his own noncommercial use from land owned or leased by him" or for "the extraction of coal as an incidental part of" highway construction or "other construction under rules established [by DOGM]." Utah Code § 40-10-5.

[5] 1,000 cubic feet equal one MCF.

further substantial levels of air pollution, harming Youth Plaintiffs' health and safety and diminishing their lifespans.

91. Defendants continue to promote and authorize fossil fuel development in Utah. Ongoing fossil fuel development in Utah is done pursuant to Defendants' Fossil Fuel Development Policy with the approval and full support of Defendants.

B. DEFENDANTS' FOSSIL FUEL DEVELOPMENT POLICY CAUSES AND CONTRIBUTES TO THE DANGEROUS AIR QUALITY AND CLIMATE CHANGE HARMING YOUTH PLAINTIFFS

92. Oil and gas wells authorized by Defendants emit dangerous air pollution, including particulate matter, carbon dioxide ("CO_2"), methane, carbon monoxide, nitrous oxide, and volatile organic compounds that act as ozone precursors. Coal mines authorized by Defendants emit particulate matter and methane. In terms of their contribution to climate change, methane emissions in Utah are at least equal to the contribution from all of Utah's transportation GHG emissions.

93. The combustion of fossil fuels extracted under Defendants' authorization causes additional air pollution, including GHGs; particulate matter; volatile organic compounds; oxides of nitrogen, sulfur, and carbon; and ozone.

94. A substantial majority of the fossil fuels extracted in Utah, all of which are extracted pursuant to Defendants' Fossil Fuel Development Policy, are combusted within the state, causing and contributing to the dangerous air quality harming youth Plaintiffs. Not including smoke from wildfires brought on by fossil fuel induced-climate change, which further contribute

to dangerous air quality, approximately 85% of the pollutants affecting air quality in Utah are fossil fuel combustion products.

95. GHGs from the combustion of fossil fuels extracted in Utah pursuant to Defendants' Fossil Fuel Development Policy cause and contribute to climate change harms in Utah regardless of where the fuels are combusted.

96. Between 1960 and November 2021, coal, oil, and gas extracted in Utah with DOGM's or its predecessors' authorization, once combusted, resulted in approximately 3,106,203,665 metric tons of CO_2 emissions.[6] The combustion of fossil fuels extracted in Utah has also resulted in, and continues to result in substantial levels of GHG emissions other than CO_2.

97. Continued maximization, promotion, and authorization of fossil fuel development by Defendants pursuant to the State's Fossil Fuel Development Policy will result in additional development and combustion of fossil fuels, further causing additional dangerous air pollution in Utah, further harming and endangering Youth Plaintiffs.

98. Utah contains significant quantities of fossil fuels not yet extracted. For example, state-wide recoverable coal resources total over 15 billion tons. The upper Green River Formation in the Uinta Basin alone holds an estimated in-place resource of over 1 trillion barrels of oil. The largest oil shale deposits in the world are in the Eocene Green River Formation, which covers parts of Utah. Utah's estimated in-ground oil shale resources are over 300 billion barrels of oil—some of the largest in the world. Utah's oil

[6] This figure does not include emissions from the combustion of coal extracted in Utah from January through November 2021.

sands resources are the largest in the United States. Utah's oil sand deposits contain 14 to 15 billion barrels of measured oil in place, with an additional estimated resource of 23 to 28 billion barrels.

99. With air quality in Utah already at unsafe levels, and atmospheric levels of GHGs already well past safe levels, every molecule of additional emissions from the development and combustion of Utah's fossil fuels harms and endangers Youth Plaintiffs and exacerbates their existing injuries.

100. Any reduction in fossil fuel development in Utah is meaningful in addressing Youth Plaintiffs' injuries and reducing the risk of future harm. With atmospheric levels of GHGs already well past safe levels, and air quality already at dangerous levels in Utah, every molecule of fossil fuel air pollution emissions prevented is meaningful in preventing worsening air quality and climate change harms to Youth Plaintiffs.

101. The theory of "perfect substitution" or "leakage" under which it is assumed that limiting production of fossil fuels in one place will never limit consumption or affect emissions because another source somewhere else will always substitute for the missing production, is and has been shown to be false and contrary to basic economic principles of supply and demand.

C. DEFENDANTS' FOSSIL FUEL DEVELOPMENT POLICY HARMS YOUTH PLAINTIFFS' HEALTH AND SAFETY AND SUBSTANTIALLY SHORTENS THEIR LIVES

i. The Dangerous Air Quality Harming Youth Plaintiffs Resulting from Defendants' Fossil Fuel Development Policy

102. Due to air pollution from the development and combustion of fossil fuels, based on air quality index data, Utah has the worst average air quality of any state in the nation, and is the only state with an average air quality index rating over 50. Living in Utah, Youth Plaintiffs are regularly exposed to dangerous air pollution from the development and combustion of fossil fuels resulting from Defendants' Fossil Fuel Development Policy.

103. With ongoing development and combustion of fossil fuels extracted pursuant to Defendants' Fossil Fuel Development Policy occurring throughout the year, with ozone formation worsening with higher temperatures brought on by climate change, and with smoke from increasingly frequent and severe wildfires brought on by climate change occurring more frequently, Youth Plaintiffs are frequently exposed and unable to escape the dangerous air quality conditions in their communities resulting from Defendants' Fossil Fuel Development Policy.

104. Air pollution due to fossil fuel development and combustion poses an existential threat to the health and safety of youth and children in Utah, including Youth Plaintiffs, causing and exacerbating medical conditions, substantially shortening lifespans, and causing deaths.

a. Youth and Children are Particularly Vulnerable To and Disproportionately Harmed By Air Pollution

105. As youth and children, Youth Plaintiffs are particularly vulnerable to and disproportionately harmed by air pollution due to their age and developing bodies.

106. All children, even those without pre-existing illness, are considered a sensitive population to air pollution.

107. The physiological features of youth and children make them disproportionately vulnerable to the harms of air pollution. Children's organs, such as the lungs and brain, are still developing, making them particularly vulnerable.

108. Compared to adults, children spend more time outside, tend to engage in more rigorous activity, and inhale more air (and therefore more air pollution) per unit of time and body weight.

109. The risk of the adverse health effects of air pollution increase with exposure and are greater for individuals exposed throughout their lifetimes beginning in their youth, like Youth Plaintiffs, than for individuals exposed beginning at later ages.

110. Childhood exposure to air pollution can result in impaired physical and cognitive development with life-long consequences.

b. The Physical Harms to Youth and Children from Air Pollution Begin During Fetal Development and Impose a Lifetime of Hardship

111. The medical harms of air pollution to youth and children begin immediately during fetal development. Air pollution during fetal development triggers miscarriages, stillbirths, and premature births; and significantly increases the incidences of birth defects, low birth weight, infant medical conditions, and infant deaths.

112. Exposure to air pollution during fetal development and youth is associated with both immediate and lifelong injuries to health. (Figure 1).

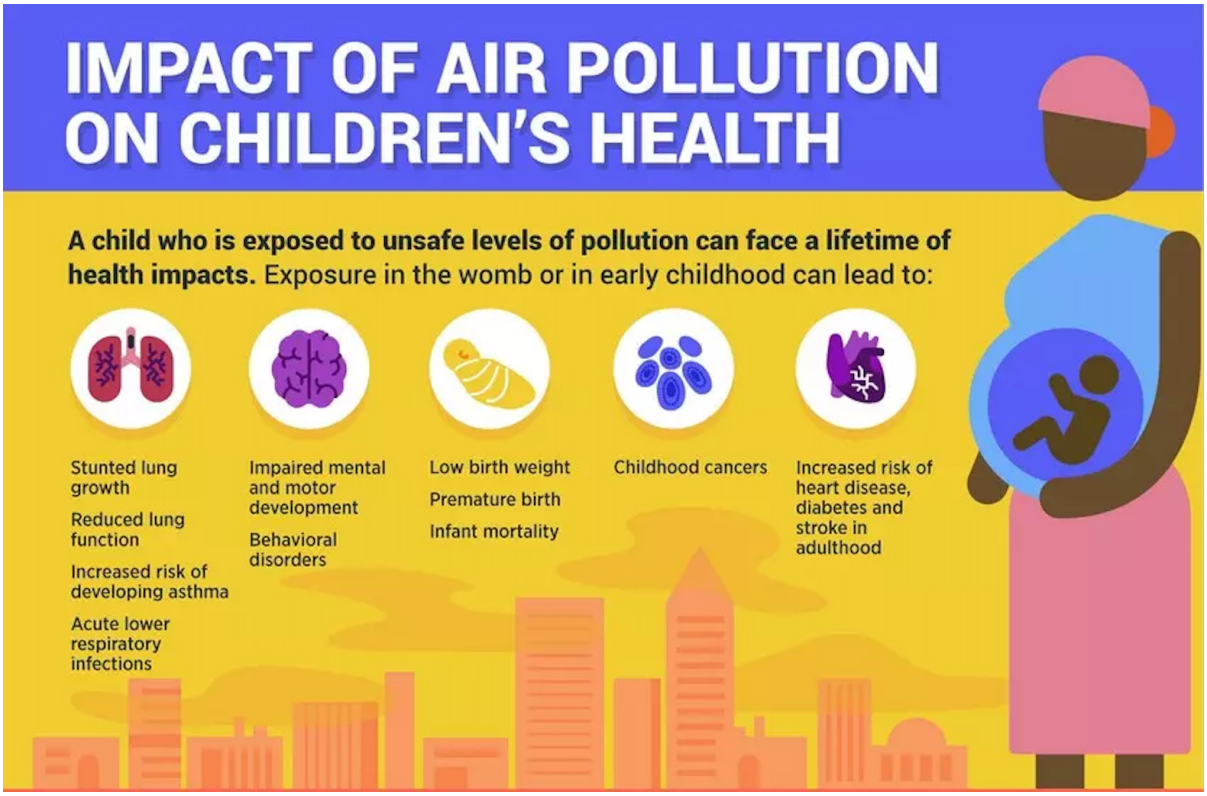

Figure 1: The harms to children's health from air pollution begin with early exposure and last a lifetime.[7]

113. The link between air pollution and harms to children's physical health is well established for a wide range of health conditions, including cardiovascular and respiratory diseases, central nervous system disorders, metabolic conditions, reproductive dysfunction, organ damage, cancer, and other serious health effects.

[7] Source: World Economic Forum, Children Are Dying From Air Pollution. Here's How We Can Protect Them, https://www.weforum.org/agenda/2021/11/how-we-can-protect-children-dying-from-air-pollution/.

114. Exposure to air pollution affects all systems in children's bodies, including neurological function, cardiovascular health, respiratory function, kidney function, and reproductive health.

115. Exposure to polluted air triggers both acute effects in children (such as respiratory distress and asthma attacks), which Youth Plaintiffs are already experiencing, as well as chronic effects including cancer and increased risk of heart disease, diabetes, and stroke later in life.

116. The risk of onset of negative health effects is associated with a single or combined exposure to air pollution. Even if youth do not feel any immediate symptoms from exposure to air pollution, exposure is still harmful. Even short-term exposure can cause long-term health effects.

117. With Youth Plaintiffs consistently exposed to air pollution in Utah resulting from the development and combustion of fossil fuels pursuant to Defendants' Fossil Fuel Development Policy, their immediate and long-term physical health is being significantly harmed by Defendants.

c. Air Pollution Harms the Cognitive Development and Mental Health of Youth and Children

118. Exposure to polluted air is associated with and causes profound harms to the cognitive development and mental health of youth and children, whose developing brains are uniquely vulnerable to air pollution.

119. The harms to the cognitive development and mental health of youth and children from exposure to air pollution begins during fetal development and can last a lifetime.

120. Exposure to air pollution during fetal development and childhood is associated with and causes impaired cognitive development and cognition, neurological disorders, and other harms.

121. Children exposed to air pollution are significantly more likely to have brain inflammation, damaged brain tissue, attention problems, and decreased memory, cognition, and intelligence. Brain inflammation is a key factor in many central nervous system disorders, including Alzheimer's and Parkinson's diseases.

122. Exposure to air pollution during childhood is associated with and causes harms to mental health, including anxiety, depression, and suicide. Children who are exposed to air pollution are significantly more likely to experience anxiety and depression.

123. Dangerous air quality can result in school and social event cancellations for children, like those Youth Plaintiffs are experiencing, disrupting their education and social learning during a period crucial to their cognitive, emotional, and social development.

124. Youth Plaintiffs are often forced to remain indoors to minimize their exposure to the unsafe air quality and temperatures in Utah. Being cooped up indoors is associated with and causes feelings of anxiety and depression.

125. With Youth Plaintiffs frequently exposed to air pollution in Utah resulting from the development and combustion of fossil fuels pursuant to Defendants' Fossil Fuel Development Policy, their cognitive development and immediate and long-term mental health is being significantly harmed by Defendants.

d. Air Pollution in Utah is Taking Years Off Youth Plaintiffs' Lives

126. Experts estimate that, because of premature death and other medical harms resulting from Utah's already dangerous air quality, 75% of Utahns are losing at least one healthy year of life, 23% are losing at least five healthy years of life, and, on average, Utahns are losing approximately three healthy years of life.[8] These sobering statistics do not account for the unique vulnerabilities of and disproportionate impact to children or increasing smoke from wildfires.

127. Due to their unique sensitivities and vulnerabilities to air pollution, Utah's youth and children, including Youth Plaintiffs, are disproportionately harmed, losing even greater numbers of years of healthy life off their lifespans.

128. Not including wildfire smoke, approximately 85% of the air pollution causing medical harm to and shortening the lifespans of Utah's Youth, including Youth Plaintiffs, is the product of fossil fuel combustion and development.

129. Utah's youth and children, including Youth Plaintiffs, will lose even greater numbers of years off their lifespans because of increasing smoke from wildfires caused and exacerbated by climate change.

130. By causing and contributing to Utah's hazardous air quality, Defendants' Fossil Fuel Development Policy is affirmatively causing harm to Youth

[8] Isabella M. Errigo et al., *Human Health and Economic Costs of Air Pollution in Utah: An Expert Assessment,* 11 Atmosphere 1238 (2020).

Plaintiffs' physical and mental health and development and taking years off their lives.

131. Medical data demonstrates significant measurable reductions and improvements in medical conditions and improvements in longevity from reductions in air pollution.

132. A declaration of the unconstitutionality of Defendants' Fossil Fuel Development Policy will lead to a reduction in the air pollution in Utah harming Youth Plaintiffs, thereby at least partially alleviating their injuries. If Defendants stop maximizing, promoting, and systematically authorizing fossil fuel development pursuant to the State's Fossil Fuel Development Policy, it will reduce the risk of harm these children are being exposed to from Utah's air quality crisis and avoid emissions that would otherwise make the crisis worse.

ii. The Dangerous Climate Change Harming Youth Plaintiffs Resulting from Defendants' Fossil Fuel Development Policy

133. Well-documented and observable changes in the climate system in Utah highlight that the current level of atmospheric CO_2 concentration resulting from the development and combustion of fossil fuels has already taken Utah into a danger zone for Youth Plaintiffs. Current CO_2 and GHG concentrations are resulting in the warming of air and land surfaces, dangerous and deadly heat waves, increased prevalence and persistence of drought and water scarcity, increasingly frequent and severe wildfires, worsening air quality, changes in rainfall and atmospheric air circulation patterns that affect water and heat distribution, and other changes that are

already harming Youth Plaintiffs' health and safety and development. Further emissions from fossil fuel development and combustion resulting from Defendants' Fossil Fuel Development Policy will only increase and worsen these harms to Youth Plaintiffs.

a. Dangerous Temperature Increase, Heatwaves, and Other Heat-Related Changes

134. Youth Plaintiffs are experiencing increasing temperatures and heatwaves that are harming them and their ability to safely grow to adulthood in Utah. As a result of GHG emissions from fossil fuel development and combustion, Utah's average annual temperatures have already risen substantially and continue to rise.

135. Utah has warmed more than the global average increase of 1.8°F since 1850. As of the end of 2021, Utah's five-year average temperature (for 2017-2021) had increased 4.1°F over Utah's five-year average temperature for 1895-1899. (See Figure 2). Since becoming a state in 1896, all but two years have been warmer for Utah than 1895 (1895's average temperature was colder than 1895's and 1905's average temperature was equal to 1895's). Temperatures have consistently risen in most Utah locations since 1970, at a rate of 0.6°F per decade through 2021. This is triple the rate of warming from 1895 to 1970 of 0.2°F per decade, demonstrating accelerated warming in Utah. Utah is warming 70% faster than the global average since 1970. (See Figure 3). Temperature trends in the past five decades have made Utah America's fifth fastest-warming state and eastern Utah one of the world's fastest warming places. Under a high emissions scenario, which is what

will happen if Defendants continue to maximize, promote, and systematically authorize the development of fossil fuels, Utah's average daily maximum temperatures could increase by 6-7°F by 2050 and by 12°F by 2100, subjecting Youth Plaintiffs to even greater injuries to their health and safety than they already face.

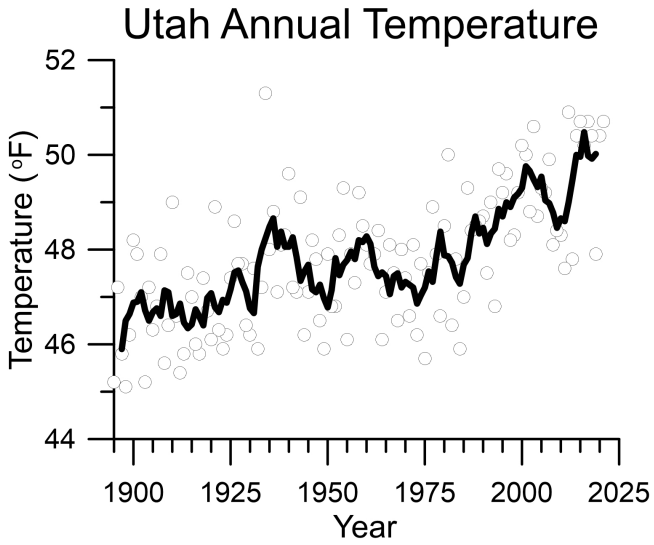

Figure 2: Utah Average Annual Temperatures from 1895-2021; circular symbols indicate individual years' temperatures with the black line indicating the five-year moving average.

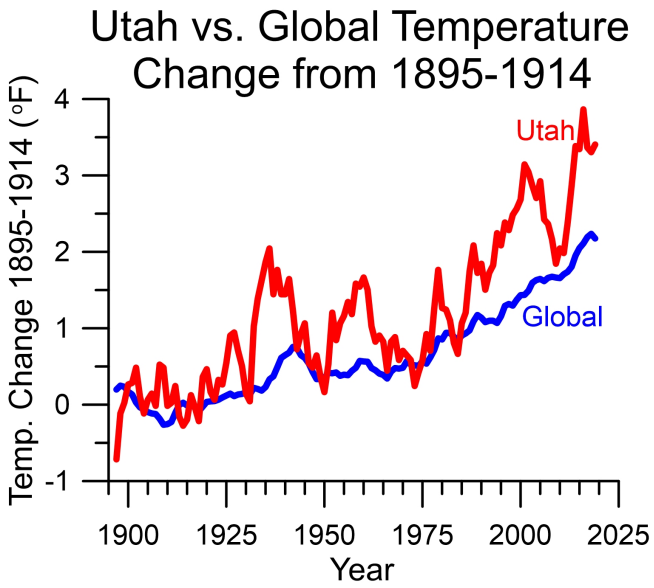

Figure 3: Change in annual temperatures from 1895-1914 average for Utah (red: five-year moving average) and the globe (blue: five-year moving average).

136. Over the last decade, Utah experienced eight of its hottest years ever recorded. Utah recorded its hottest summer on record in 2021, forcing many of Youth Plaintiffs to remain indoors for long periods during which temperatures were too dangerous for them to be outside. The Salt Lake City area, where many of Youth Plaintiffs live, broke its high temperature record with a high of 107°F. St. George hit 117°F, tying the all-time high for the entire state.

137. Extreme heat days in Utah, measuring over 100°F, are occurring more frequently and extreme heatwaves are becoming more frequent. The extreme heatwave that rolled through the American West in late June of 2021, including Utah, which caused hundreds of deaths and made it unsafe for Youth Plaintiffs to be outdoors, was made 150 times more likely and 3.6°F hotter than it would have been without anthropogenic climate change. If global warming reaches 2°C, such an extreme heatwave is

projected to occur every five to ten years, compared with once every 1,000 years without anthropogenic climate change. With continuing emissions, heat waves will continue to rise in frequency, intensity, duration, and spatial extent, increasingly harming Youth Plaintiffs.

138. Higher temperatures and heat waves from anthropogenic climate change increase the risk of heat-related illnesses and death for Youth Plaintiffs. Heat waves are the deadliest weather events in the U.S., causing more fatalities than tornadoes, hurricanes, floods, and earthquakes combined. If fossil fuel development and combustion continues under a business as usual scenario, the Southwest will experience the highest increase in annual premature deaths due to heat in the country.

139. As youth and children, Youth Plaintiffs are disproportionately harmed by and uniquely vulnerable to the dangers of increasing temperatures and heat waves resulting from climate change. Youth are particularly vulnerable to and at an increased risk of heat-related illness and death compared to adults due to their greater surface area to body mass ratio, lower rate of sweating, and slower rate of acclimatization. Youth also spend more time recreating outside, engage in more rigorous activities, and have a harder time self-regulating. Youth also face higher risk of dying or becoming ill due to extreme heat than adults.

140. Increased heat exposure is particularly devastating for youth and children at multiple stages of development. Climate-induced extreme heat causes fetal death. Extreme weather events can lead to low birthweight and preterm birth of babies. Infant mortality increases 25% on extremely hot

days, with the first seven days of life representing a period of critical vulnerability. Extreme heat places children at higher risk of kidney and respiratory disease as well as fever and electrolyte imbalance. Heat illness is also a leading cause of death and illness in high school athletes with nearly 10,000 episodes occurring annually. Hotter temperatures lead to more emergency department visits for children with heat-related illnesses, bacterial enteritis, otitis media and externa, infectious and parasitic diseases, nervous system diseases, and other medical issues.

141. Increasing temperatures are also worsening the already dangerous air quality conditions in Utah resulting from Defendants' Fossil Fuel Development Policy. Increasing temperatures from climate change are increasing ozone formation in Utah, worsening air pollution and the resulting harms to Youth Plaintiffs. Ozone levels are projected to increase as a result of climate change.

142. Increasing temperatures from climate change are also causing longer and worse pollen seasons, harming youth, like Dallin, who suffer from seasonal allergies. Increasing temperatures allow plants to pollinate earlier and higher CO_2 concentrations in the air increase pollen production. Pollen is a common trigger of both allergies and asthma. Asthma already affects 6.2% of children age 0–17 in Utah, including Youth Plaintiff Sedona, and increased pollen production increases the risk of asthma attacks. An increase in allergy and asthma symptoms can affect children's physical and psychological health by interfering with sleep, play, and school attendance and performance.

143. Increasing temperatures due to anthropogenic climate change are increasing the risk and spread of vector-borne diseases in Utah carried by mosquitoes and ticks, such as West Nile virus and Lyme disease. As temperatures warm, the habitat range of mosquitos and ticks increases and their breeding seasons lengthen, exposing Youth Plaintiffs to increased risk of disease. As youth and children, Youth Plaintiffs are disproportionately vulnerable to the increasing risk of vector-borne diseases resulting from climate change. Compared to other age groups, youth and children spend more time outdoors and engage in activities that bring them in close contact with areas and habitat in which ticks and mosquitos are present. Youth are particularly vulnerable to climate change-related diseases. The vast majority (approximately 88%) of current sufferers of diseases due to climate disruption are children.

144. The increasing temperatures and resulting harms to Youth Plaintiffs will only increase with continuing development and combustion of fossil fuels pursuant to Defendants' Fossil Fuel Development Policy.

b. Wildfires and Wildfire Smoke

145. Each of the Youth Plaintiffs is already being harmed by exposure to smoke from wildfires brought on by climate change. Wildfires produce dangerous air quality both locally and in downwind areas by spewing fine particulate matter, carbon monoxide, oxides of nitrogen, and volatile organic compounds that are ozone precursors into the air.

146. As youth and children, Youth Plaintiffs are particularly vulnerable to and at an increased risk of injuries to their health from dangerous air quality,

including from wildfire smoke. As with exposure to air pollution generally, exposure to wildfire smoke causes, and increases Youth Plaintiffs' risk of, premature death, adverse chronic and acute cardiovascular and respiratory health outcomes, cancer, reproductive problems, premature birth and birth defects, and other medical problems.

147. Utah, in particular northern and western Utah (with populations consisting of over 25% children), already experiences dangerous air quality from wildfire smoke. In the summer of 2021, Utah experienced some of the worst air quality in the world because of wildfire smoke, with the Salt Lake City area, where many of Youth Plaintiffs live experiencing the worst air quality in the world on August 6, 2021.

148. Youth Plaintiffs are already experiencing harms to their health and safety from exposure to wildfire smoke in Utah, including headaches, shortness of breath, painful breathing, forced time indoors, and the risk of triggering existing and developing additional medical problems. With dangerous air pollution from Defendants' Fossil Fuel Development Policy already reducing the number of years of healthy life in Youth Plaintiffs' lifespans, the additionally increasingly dangerous air quality in Utah resulting from wildfire smoke further compounds the dangers and resulting harms to Youth Plaintiffs' health, safety, and lives.

149. Climate change is increasing both the number and severity of fires in Utah and across the West. The average number of acres burned during the warm season (May through September) in the western U.S. during the period from 2001 to 2018 nearly doubled relative to the period from 1984 to 2000,

with a 70% increase in acres burned in Utah. For the period between 1979 and 2020, anthropogenic climate change was responsible for at least 68% and as much as 88% of the atmospheric conditions fueling increasingly destructive wildfires in the American West, including Utah. About half of the acres burned by western U.S. wildfires from 1984–2015 can be attributed to climate change.

150. Increasingly frequent and severe wildfires in Utah brought on by climate change also threaten the destruction of homes and communities, harming and endangering lives and health. Communities in which Youth Plaintiffs live and in which their families live have already seen destruction from wildfires.

151. The wildfire smoke conditions in Utah harming Youth Plaintiffs are projected to worsen as climate change leads to increasingly frequent and severe wildfires and will only further worsen with continuing GHG emissions resulting from Defendants' Fossil Fuel Development Policy.

c. Changing Precipitation Patterns, Drought, Flooding, and Other Harmful Climate Disruptions

152. Anthropogenic climate change is causing changes in Utah's rain and snowfall, accumulation of snowpack, the intensity of storms, and the frequency and severity of droughts and floods, harming Youth Plaintiffs and endangering their lives, health, and safety.

153. Climate change is increasing the probability and incidence of drought and water scarcity in Utah, including severe and long-duration droughts, through rising temperatures and changing precipitation patterns. Utah is

the second driest state in the nation and is already experiencing drought conditions and water scarcity due to anthropogenic climate change.

154. Utah is currently experiencing its worst drought in recorded history, which is the driest 22-year period in 1,200 years. 2020 was Utah's driest year on record overall and Utah experienced its most intense period of drought on record in 2021, with 100% of all land in the state experiencing drought categorized as extreme or exceptional drought.

155. Drought and water scarcity pose profound dangers to Youth Plaintiffs' lives, health, and safety, threatening food and water security, creating shortages of water for human consumption and sanitation, and increasing the risk of wildfire, which in turn contributes to worse air pollution and air quality in Utah.

156. Ninety-five percent of Utah's water supply comes from melting snowpack. Due to rising temperatures, the amount of precipitation falling as rain relative to snow is increasing in Utah. Increasing temperatures and diminished snowfall have caused Utah's snowpack to decrease since the 1950s. The snowpack in some areas decreased nearly 80% between 1955 and 2020. (Figure 4).

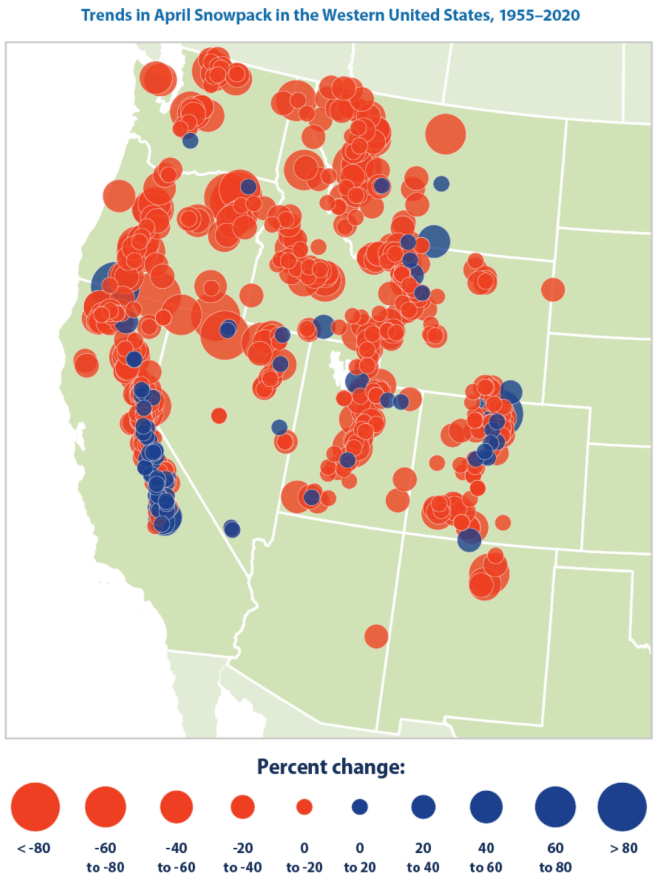

Figure 4: Trends in April snowpack, the month snowpack usually peaks in Utah, between 1955–2020.[9]

157. The timing of the peak of Utah's snowpack has also shifted and continues to shift toward an earlier date, meaning that Utah's snowpack is melting earlier, increasing the risk of summer water shortages. In many areas, peak snowpack date shifted more than twenty days earlier between 1982 and 2020 alone. (Figure 5).

[9] Source: U.S. EPA Climate Change Indicators: Snowpack, https://www.epa.gov/climate-indicators/climate-change-indicators-snowpack.

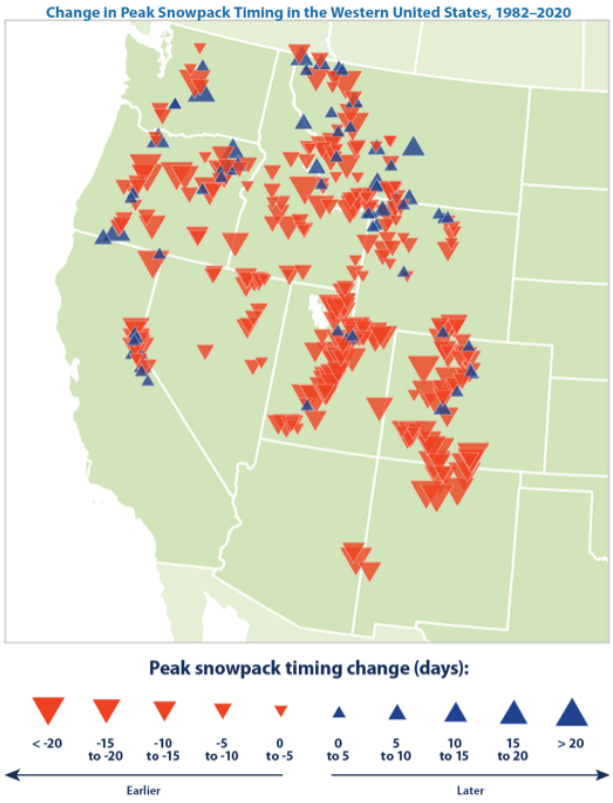

Figure 5: Change in date of peak snowpack in the Western U.S. from 1982 to 2020.[10]

158. As snowfall decreases and the snowpack melts prematurely, less water flows into Utah's reservoirs, creating a deficit in Utah's surface water supply, leading to water scarcity and water security issues. Utah's reservoir levels are declining to alarming levels as a result of anthropogenic climate change, threatening the water security of Youth Plaintiffs.

159. Drought has shriveled the Great Salt Lake, the country's largest body of water after the Great Lakes, to its lowest level in recorded history, resulting in vast areas of parched, exposed lakebed. In July of 2021, the Great Salt

[10] Source: U.S. EPA Climate Change Indicators: Snowpack, https://www.epa.gov/climate-indicators/climate-change-indicators-snowpack.

Lake reached its lowest mark since measurements began in 1847 and has continued dipping. At its average water elevation, the Great Salt Lake spreads over 1,700 square miles, but in the summer of 2021, it spanned only about 950 square miles after losing 44% of its surface area. In November of 2021, the Lake covered only 937 square miles.

160. While the Great Salt Lake's water is not drinkable for humans, lake-effect snowstorms contribute approximately 10% of the snow that inhabitants of the surrounding areas, including Youth Plaintiffs, rely on for water. Thus, diminishing lake levels threaten human water security.

161. Drought has similarly exposed other lakebeds throughout Utah. Residuals of pesticides and agricultural chemicals have migrated into many of the lakes, including the Great Salt Lake, over many decades. The exposed lakebeds pose additional threats to air quality. When wind blows over the parched lakebeds, it picks up dust, blowing it into populated areas, exposing millions of people in Utah, including Youth Plaintiffs, to dust storms laced with particulate matter, arsenic, and other toxic chemicals. Ninety percent of the dust in the Wasatch Front comes from dry lakebeds. Dust from the exposed lakebeds accumulates in snowpack, causing earlier snowmelt, further disrupting water supply and threatening water security.

162. The increasing severity of drought conditions in Utah is a direct function of anthropogenic climate change brought on by fossil fuel development and combustion. Anthropogenic climate change has contributed approximately 46% of the severity of the current drought conditions in the American West. Drought conditions will continue to become more

prevalent and severe in Utah with continuing GHG emissions from fossil fuel development and combustion resulting from Defendants' Fossil Fuel Development Policy.

163. Higher temperatures and drought brought on by anthropogenic climate change are increasing harmful algal blooms in Utah's waters, increasing the risk of sickness and death in Youth Plaintiffs. Exposure to toxic algae blooms through swimming or other water sports, breathing in water spray that contains toxins, drinking contaminated water, or eating contaminated fish can cause medical harm, including: skin, eye, nose, and throat irritation; stomach pain; headache; neurological symptoms; vomiting; diarrhea; liver and kidney damage; and death. Youth and children are particularly susceptible to the dangers of exposure to harmful algae blooms because they have more sensitive skin than adults, spend more time in the water, and are more likely to swallow or inhale affected water. Toxic algal blooms now plague Utah's lakes, reservoirs, and other waters each summer, presenting dangers to waters used for recreation and human consumption. For each of the past six summers, blooms have affected Utah Lake, sickening more than 100 people in 2016 with vomiting, diarrhea, headaches, and rashes, and spreading to the Jordan River, near Youth Plaintiff Dallin's home and where he often recreates. Algal blooms led to a lake-wide warning for Utah Lake in summer of 2021, with DNR warning that "children should not be allowed in the water." As DNR acknowledged in 2021, the "magnitude of harmful algal blooms (HABs) continues to be a concern" on "Utah's water bodies."

164. Climate-induced changes in water supply and water quality are also harming agriculture in Utah. Increased heat, water shortages, and associated issues such as pests, crop diseases, and weather extremes (including fires) hurt crop and livestock production and quality, threatening food security and increasing malnutrition through decreased yields, increased prices, and decreased calorie availability.

165. When storms do bring precipitation to Utah, it falls more intensely due to anthropogenic climate change, increasing the risk of harms to Youth Plaintiffs' health and safety from flooding and contaminated waters. As temperatures increase, there is increased evaporation and consequently a greater amount of water vapor in the atmosphere. Increased atmospheric water vapor produces higher intensity precipitation events, even if drier conditions in an area are otherwise increasing. Heavier rainfall creates greater sediment runoff into surface waters like lakes and rivers, introducing contaminants from agriculture, an overload of minerals, and a variety of disease pathogens.

166. Intense rainfall increases the risk of flooding. Floods in Utah from extreme precipitation events have increased and are projected to continue increasing due to anthropogenic climate change. Warmer temperatures lead to rapid and early snowmelt, resulting in flooding. Warmer temperatures also increase the incidence of rain-on-snow events, which increase flooding. Drought conditions and higher intensity precipitation events brought on by climate change also increase the risk of flash floods in Utah. Flash floods alone have increased six-fold in Utah from 2000–2020.

167. Flooding causes property damage and poses a danger to human life, health, and safety. Flooding physically harms and endangers human beings, causes deaths, contaminates drinking water, compromises sewage systems, and increases waterborne diseases. Floods can also create stagnant waters that become breeding grounds for vector-borne diseases like West Nile virus.

168. The anthropogenic climate change-induced drought conditions and changing precipitation patterns in Utah harming Youth Plaintiffs will worsen with continuing GHG emissions resulting from Defendants' Fossil Fuel Development Policy.

d. Mental Health Harms to Youth and Children

169. Youth Plaintiffs are suffering harm to their psychological health as a result of Defendants' Fossil Fuel Development Policy. As youth and children, Youth Plaintiffs are disproportionately injured by the psychological (cognitive, emotional, social, and functional) effects of the climate crisis, harming their psychosocial health and wellbeing. Experiencing and expecting dangerous climate harms can be traumatic, with lasting consequences for mental health, especially for developing youth.

170. Childhood is a condition of life when a person is most susceptible to psychological damage. The disturbances in childhood from the climate crisis can harm brain development and permanently and adversely affect the prefrontal cortex, with lifelong adverse consequences.

171. Psychological health harms related to climate change include elevated levels of anxiety, depression, post-traumatic stress disorder, increased incidences of suicide, substance abuse, social disruptions like increased violence, and a distressing sense of loss.

172. Many youth, including Youth Plaintiffs, experience anxiety over the climate crisis. Climate anxiety is associated with cognitive, emotional, and functional impairment. For instance, Youth Plaintiffs Natalie and Dallin find it difficult to concentrate or think of other things because of the anxiety they experience because of the climate crisis and often experience feelings of stress and dread. Distress about climate change is associated in young people with feelings of having no future, that humanity is doomed, and with feelings of betrayal and abandonment by government and by adults.

173. The psychological stressors of the climate crisis can have significant, long-lasting negative implications on the mental health of youth. Chronic stress related to the climate crisis increases the risks of physical and mental health problems. The physical and psychological stressors and harms of the climate crisis may exacerbate pre-existing mental and physical health problems in youth.

174. Climate changes, such as heat waves and wildfires, make it unsafe to spend time outdoors and can necessitate school and social event cancellations, such as those experienced by Youth Plaintiffs, disrupting youth's education and social learning during a period crucial to their cognitive, emotional, and social development.

175. Youth also face physiological and psychological barriers to family formation as a result of the climate crisis. For example, increasingly children, including Youth Plaintiffs Natalie, Lydia, Lola, and Dallin are experiencing stress and anxiety and expressing that they do not think they should have, will have, or will be able to safely have children, because they are and their children would also be subject to the increasing dangers of the climate crisis.

176. Increasing temperatures, wildfire smoke, and other increasing dangers of the climate crisis increase the risk of premature birth, birth defects, and other pregnancy complications that threaten the health of both pregnant mothers and their babies.

177. The harms to Youth Plaintiffs' mental health and development will worsen as continuing GHG emissions from Defendants' Fossil Fuel Development Policy exacerbate Utah's already critical climate crisis. A declaration of the unconstitutionality of Defendants' Fossil Fuel Development Policy would lead to a reduction in GHG emissions, at minimum slowing the climate crisis and thereby helping to alleviate the harms to Youth Plaintiffs' mental health and development.

e. Youth Plaintiffs Will Disproportionately Experience the Increasingly Worsening Harms of Utah's Climate Crisis

178. The physiological features of Youth Plaintiffs, as youth and children, make them disproportionately vulnerable to the harms of the climate crisis. Children's still-developing organs, such as the lungs and brain, make them particularly vulnerable to environmental stresses, pollution, and injuries.

Childhood exposure to climate disruptions can result in impaired physical and cognitive development with life-long consequences. (See Figures 6 and 7).

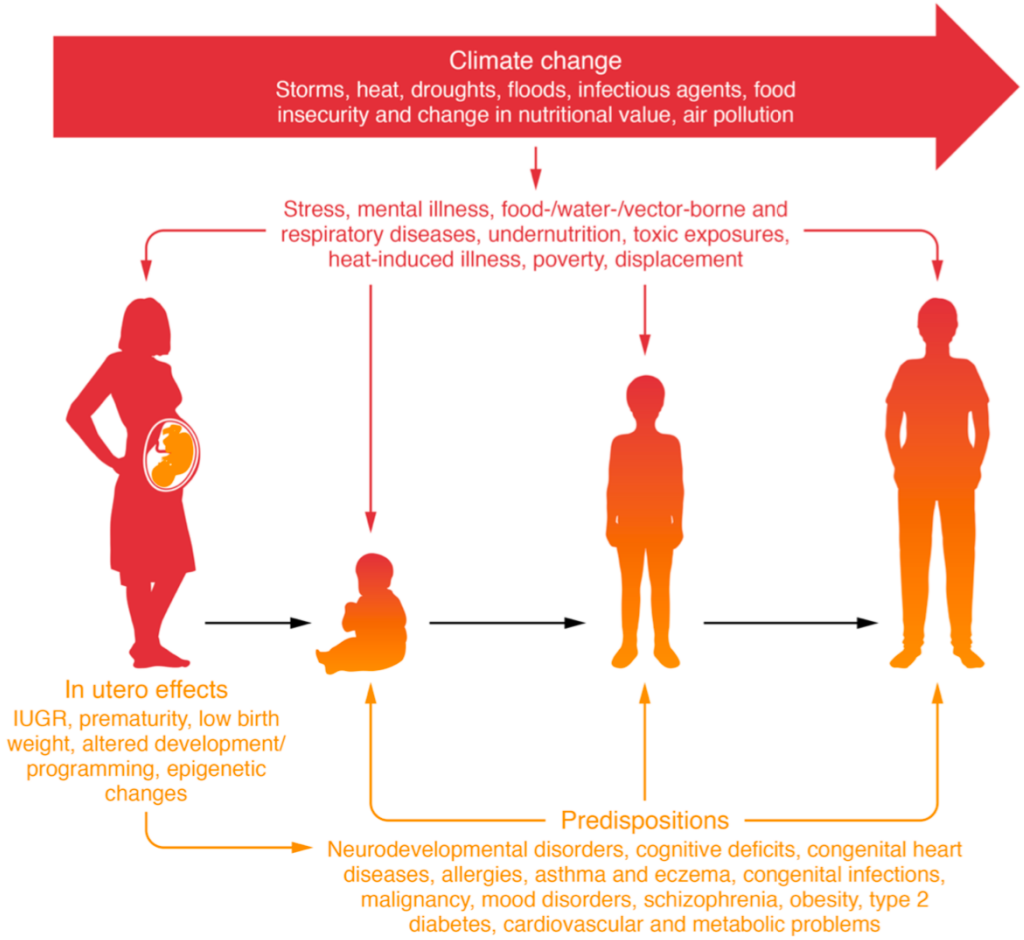

Figure 6: The harmful effects of climate disruption and air quality impairment on children start before they are born and result in lifelong hardships.[11]

[11] Source: Susan E. Pacheco, *Catastrophic Effects of Climate Change on Children's Health Start Before Birth*, 130 J. Clinical Investigation 562 (2020), https://www.jci.org/articles/view/135005.

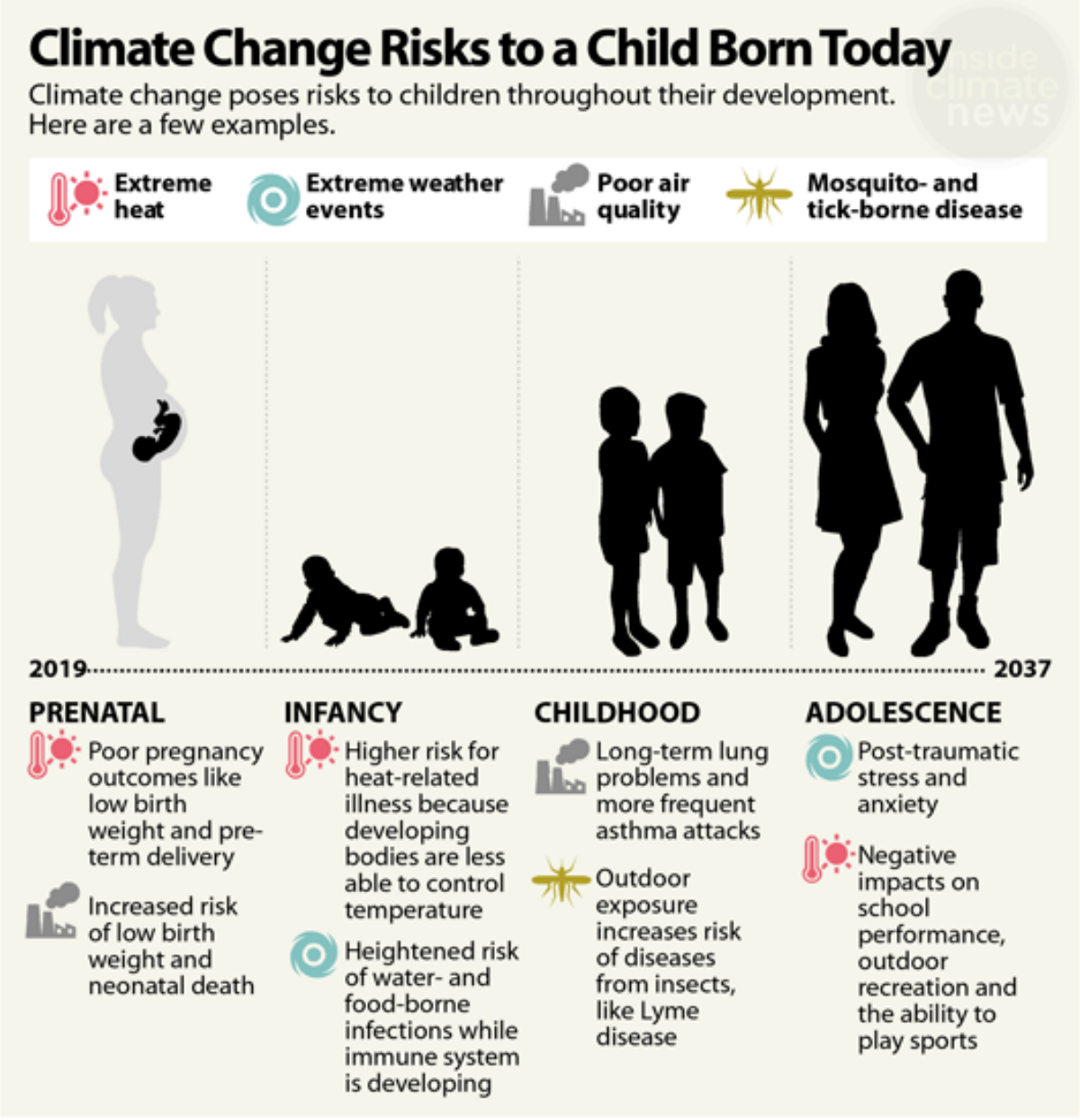

Figure 7: The harmful effects of climate disruption and air quality impairment on children throughout their development.

179. As youth and children, Youth Plaintiffs are also disproportionately vulnerable to the physical and psychological harms of the climate crisis

because, as they grow older, they will experience increasingly numerous, frequent, and severe injuries in comparison with present generations of adults. Today's youth, including Youth Plaintiffs, and future generations of Utah's children, will experience worse and more frequent climate harms than today's generation of adults. With continued development and combustion of fossil fuels, dangerous climate harms, including extreme heat waves, drought, and wildfires, will continue to rise in frequency, intensity, duration, and spatial extent. Youth Plaintiffs will therefore face such events in greater prevalence, frequency, and severity in their lifetimes than older generations.

180. Under current GHG emission rates, children born in 2020 are expected to face more than a seven-fold increase in overall extreme climate events, such as heat waves, wildfires, crop failures, droughts, and floods, when compared with people born in 1960. An adult born in 1960 will likely experience between two and six extreme heatwaves in their lifetime regardless of future emissions, whereas a child born in 2020 will likely experience between 21 and 39 extreme heatwaves in their lifetime if global warming is allowed to reach 2.4°C, (Figure 8), and will experience far more under current emissions trajectories, which are on track for up to 3.9°C of warming by 2100. If global warming reaches 3.5°C, a child born in 2020 will likely experience 44 times more extreme heatwaves in their lifetime than an adult born in 1960. The lifetime exposure disparities between youth, including Youth Plaintiffs, and present generations of adults are similar across other harms of the climate crisis. (Figure 9).

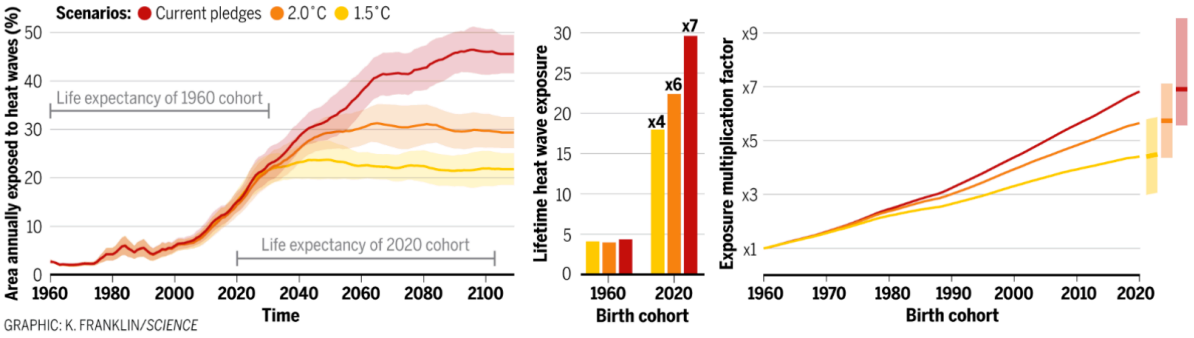

Figure 8: Left: Global land area exposed to heat waves annually under three GHG emissions scenarios. Middle: Lifetime heatwave exposure for persons born in 1960 and 2020 under three emissions scenarios. Numbers above bars indicate exposure multiplication factors relative to persons born in 1960. Right: Exposure multiplication factors for lifetime heat wave exposure by birth year relative to persons born in 1960 under three emissions scenarios.[12]

[12] Source: Wim Thiery et al., *Intergenerational Inequities in Exposure to Climate Extremes*, 374 Science 158 (2021), https://doi.org/10.1126/science.abi7339.

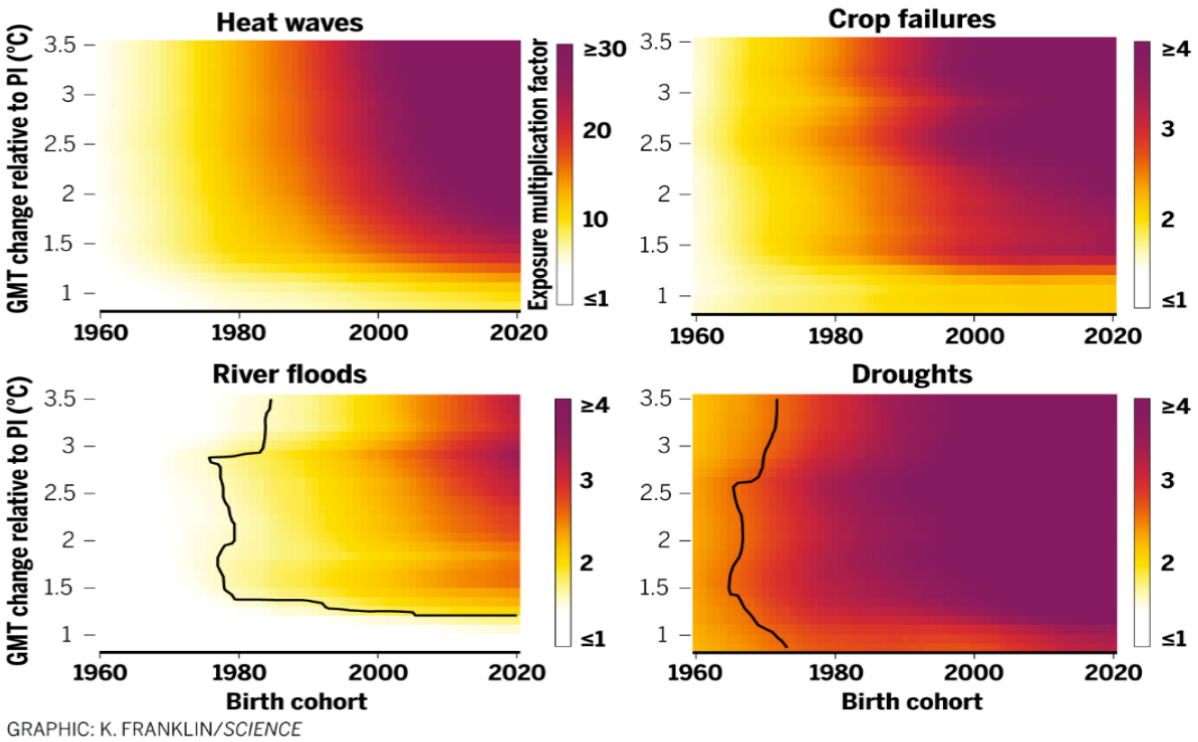

Figure 9: Extreme event exposure multiplication factors by birth year under a range of global warming trajectories relative to someone living in the preindustrial (PI) period.[13]

D. THE SCIENCE BEHIND ANTHROPOGENIC CLIMATE DISRUPTION AND THE DANGERS OF DEFENDANTS' FOSSIL FUEL DEVELOPMENT POLICY

181. There is an overwhelming scientific consensus that human-caused climate change is occurring now, harming and endangering humans and the natural systems on which human life depends. The present rate of global warming is unprecedented in the historic and prehistoric record and is primarily the result of anthropogenic GHG emissions from the development and combustion of fossil fuels. This release of GHG emissions into the atmosphere has disrupted Earth's energy balance, changing Earth's

[13] Source: Thiery, Note 12, *supra.*

climate, and is resulting in dangerous climate changes that are harming Youth Plaintiffs.

182. Carbon dioxide is the GHG most responsible for trapping excess heat and energy within Earth's atmosphere. Excess CO_2 and other GHGs create an "energy imbalance" that drives warming temperatures and climate disruption. GHGs in the atmosphere act like a blanket over Earth to trap the heat received from the sun. (Figure 10). Scientists have understood this basic mechanism of global heating since at least the late-nineteenth century. More GHGs in the atmosphere means that more heat is retained on Earth, with less heat radiating back out into space, causing a disruption in Earth's energy balance. This imbalance causes Earth to heat up until it reaches an equilibrium in which it again radiates as much energy from space as it absorbs from the sun.

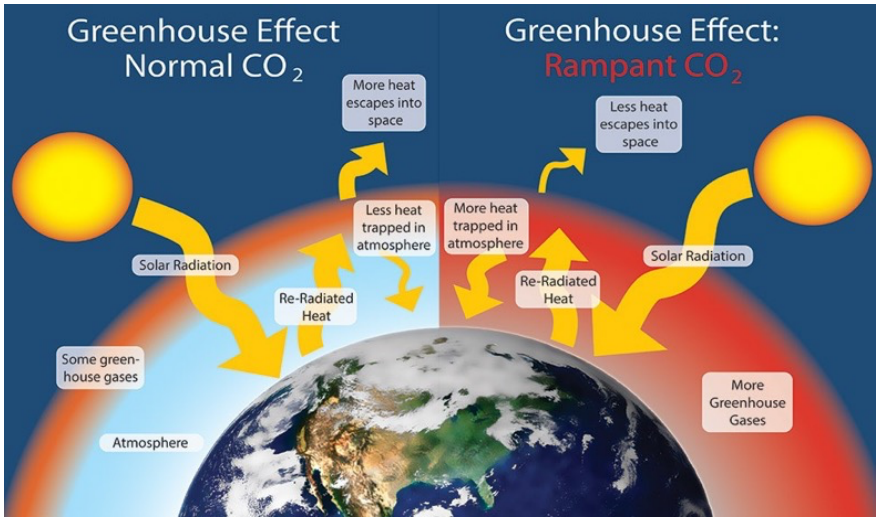

Figure 10: While GHGs, like CO_2, normally trap some of the sun's heat, which prevents the planet from freezing (left side), with increasing atmospheric concentrations of GHGs, the planet is now experiencing an energy imbalance and is warming at an unprecedented rate (right side).

183. A substantial portion of every ton of CO_2 persists in the atmosphere for millennia, continuing to cause warming and affect the climate long after it was emitted. Because of its long duration in the atmosphere, CO_2 steadily accumulates, increasing Earth's energy imbalance. It requires centuries for the climate system to reach a new equilibrium consistent with a changed atmospheric composition. As a result of Earth's excess concentrations of CO_2 and existing energy imbalance caused by previous GHG emissions, Earth already has substantial additional warming above today's levels "in the pipeline." Earth will continue to heat up and the climate change harms and threats to Youth Plaintiffs will become more frequent and severe. Ongoing GHG emissions of today and additional emissions of tomorrow from Defendants' Fossil Fuel Development Policy will only further increase atmospheric concentrations of GHGs, Earth's resulting energy imbalance, and the resulting warming and climate dangers harming Youth Plaintiffs.

184. The latency of additional warming and climate dangers from existing excess concentrations of CO_2 and continuing additional emissions means that the harm from past and present day GHG emissions will be disproportionately borne by today's youth and children, including Youth Plaintiffs, and future generations.

185. Atmospheric CO_2 levels and global temperature are closely correlated as depicted in the graph below (Figure 11). The correlation of CO_2 levels and global temperature holds true tens of millions of years into Earth's past. For hundreds of thousands of years, CO_2 levels have naturally fluctuated between 180 and 280 ppm.

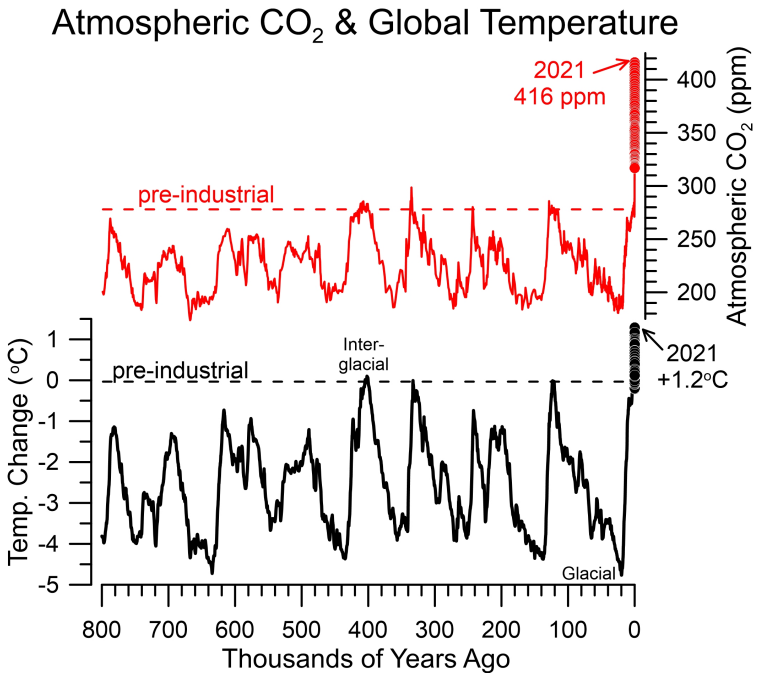

Figure 11: Correlation of atmospheric concentrations of CO_2 and global temperature change from pre-industrial temperatures for the last 800,000 years.[14]

186. The atmospheric concentration of CO_2 has been increasing, and continues to increase, as a direct result of development and combustion of fossil fuels. (See Figure 12). Current atmospheric CO_2 concentrations are higher than levels have been in millions of years. The global annual average atmospheric CO_2 concentration for 2021 was 416.45 ppm compared to the pre-industrial concentration of 280 ppm.

[14] Data Sources: Dieter Lüthi et al., *High-Resolution Carbon Dioxide Concentration Record 650,000-800,000 Years Before Present*, 453 Nature 379 (2008); M. Rubino et al., *A Revised 1000 Year Atmospheric $d^{13}C$-CO_2 Record From Law Dome and South Pole, Antarctica*, 118 J. Geophysical Rsch. 8482 (2013); James Hansen et al., *Climate Sensitivity, Sea Level and Atmospheric Carbon Dioxide*, 371 Phil. Transactions Royal Soc. 20120294 (2013); https://gml.noaa.gov/ccgg/trends/; https://data.giss.nasa.gov/gistemp/.

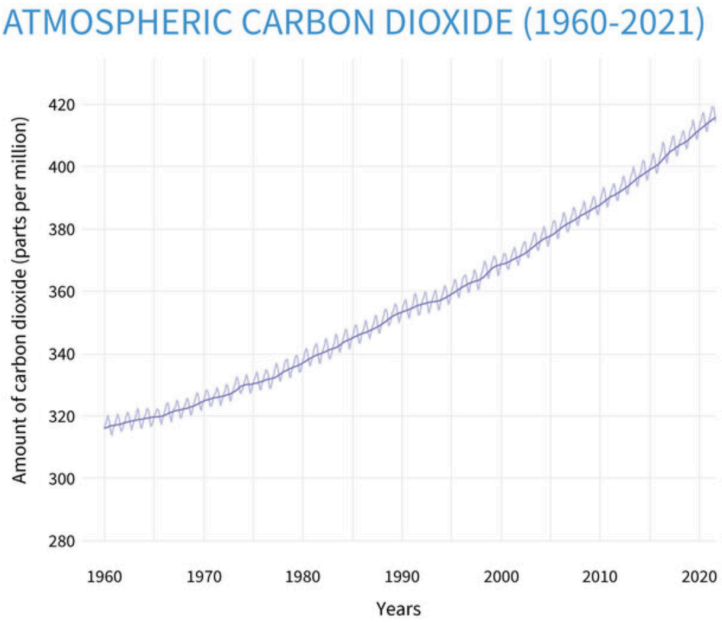

Figure 12: Atmospheric CO_2 at Mauna Loa Observatory. This graph shows the station's monthly average CO_2 measurements since 1960 in parts per million. The seasonal cycle of highs and lows (small peaks and valleys) is driven by summertime growth and winter decay of Northern Hemisphere vegetation.

187. For the first time in the measurable paleoclimatic record, CO_2 levels have risen by more than 130 ppm within only 150 years, a rate 100 times faster than the natural increase in CO_2 from 180 ppm 20,000 years ago to 270 ppm 11,000 years ago that drove the end of the last ice age.

188. The concentrations of other GHGs in the atmosphere have also increased. For example, the concentration of methane, a GHG that is 86 times more potent at trapping heat than CO_2, has increased approximately 250% since the mid 1800s.

189. The present level of atmospheric CO_2 concentrations, Earth's energy imbalance, and the resulting level of warming and other climate changes, both realized and latent, are already dangerous. Additional GHG emissions

further increase the danger and risk triggering climatic tipping points and amplifying feedback loops after which runaway, catastrophic climate change becomes unstoppable and irreversible for hundreds of years. For instance, present rates of warming are already beginning to thaw permafrost in the Earth's polar regions, releasing methane previously frozen in place, thereby causing additional warming, which causes yet more permafrost thaw, creating an amplifying feedback loop.

190. With atmospheric CO_2 already at concentrations that are now causing dangerous climate disruption, continued GHG emissions from fossil fuels will further disrupt Earth's climate system, imposing profound and mounting risks of ecological, economic, and social collapse, and further harm to Youth Plaintiffs.

191. There is a scientific consensus that the maximum safe level of atmospheric CO_2 for humanity is 350 ppm. The best available science today prescribes that global atmospheric CO_2 concentrations must be reduced to no more than 350 ppm by 2100 (with further reductions thereafter) in order to restore Earth's energy balance and stabilize the climate system as necessary to preserve conditions that are safe for human life. Emissions reduction and sequestration pathways back to 350 ppm by 2100 would stabilize long-term global heating at no more than 1°C above pre-industrial temperatures.

192. There are two steps to reducing atmospheric CO_2 levels to a maximum level of 350 ppm by 2100: (1) near complete elimination of fossil fuel CO_2

emissions by 2050; and (2) sequestering excess CO_2 already in the atmosphere by maximizing carbon sequestration capacity.

193. With every additional year of continuing emissions from Defendants' Fossil Fuel Development Policy, it becomes that much more difficult to reach 350 ppm by 2100. At some point, the ability to return to safe CO_2 concentrations will become physically impossible for hundreds of years to come.

194. To avoid causing further harm to Youth Plaintiffs, and to preserve the possibility of reducing atmospheric CO_2 concentrations to 350 ppm by 2100, as necessary to preserve a safe future for Youth Plaintiffs, this Court must declare Defendants' Fossil Fuel Development policy unconstitutional. If Defendants stop maximizing, promoting, and systematically authorizing the development of fossil fuels, it will reduce the risk of harm Youth Plaintiffs are being exposed to by slowing the worsening climate crisis and avoiding emissions that would otherwise make the crisis worse. Reducing emissions today also keeps the achievement of long-term safety a realistic possibility for Youth Plaintiffs.

E. DEFENDANTS' LONGSTANDING KNOWLEDGE OF THE DANGERS OF AIR QUALITY IMPAIRMENT AND CLIMATE CHANGE FROM FOSSIL FUELS

195. Since at least the 1960s, Utah government-sponsored reports have detailed that dangerous air quality results from the development and combustion of fossil fuels. In June 1962, the Utah Legislative Council, Air Pollution Advisory Committee submitted a report entitled "Air Resources of Utah" detailing the harmful effects of air pollution in Utah from fossil fuels.

196. Former Governor Michael O. Leavitt stated in January 1993, in a charge to Utah's Department of Environmental Quality ("DEQ"), that "clean air" is "essential to" Utah's "quality of life and economic development."

197. In his 10-Year Strategic Energy Plan, issued in 2011, former Governor Herbert acknowledged that "Utah also suffers some of the worst air quality days in the Nation. It will be critical for human health and the environment and economic development to implement energy development in a way that takes this unique situation into account." The plan acknowledges that the development and combustion of fossil fuels causes air quality impairment in Utah.

198. State governmental documents from at least as early as 1996 demonstrate Utah state governmental knowledge of anthropogenic climate change. In the 1996 report *Utah Greenhouse Gas Emissions Estimates for 1990 and 1993*, DEQ and DNR stated that "[i]t is now generally accepted that the Earth is being warmed by human activities, in particular greenhouse gas emissions from the burning of fossil fuels." The report stated that "the areas most vulnerable to" climate disruption include "air quality, and human health." The report stated: "Drastic cuts in emissions would be required in order to stabilize atmospheric composition. Because greenhouse gases remain in the atmosphere for decades to centuries, merely stabilizing emissions at current levels would allow the greenhouse effect to intensify for more than a century." In the 1996 report, DEQ and DNR acknowledged part of the role Defendants play in causing climate change, stating that "states can

significantly affect their emissions of greenhouse gases" because of their "direct regulatory authority over the sources" of CO_2 emissions.

199. For decades, Defendants have known of the dangerous harms of air pollution and climate change resulting from the development and combustion of fossil fuels, that air pollution and climate change resulting from the development and combustion of fossil fuels are harming Utahn youth and children, and that continuing fossil fuel development would consign current and future generations of Utahn children and youth to irreversible and catastrophic consequences.

200. Air pollution and climate change are already, and, absent science-based reductions, will increasingly result in massive adverse economic impacts to Utah's economy. Economic and financial losses from air pollution and climate change are wide-ranging and span across many sectors, including healthcare, tourism, sports and recreation, wildlife and fisheries management, forestry, disaster relief, and agriculture, among others.

201. Fossil fuel energy is the least efficient and most dangerous and unsustainable form of energy available to Utah.

202. Alternative means that do not cause dangerous air pollution and climate change harms to Youth Plaintiffs are now and have long been available to meet Utah's energy needs and to foster economic activity. Non-fossil fuel-based energy systems across all sectors, including electricity generation and transportation systems, are currently economically feasible and technologically available to employ in Utah. Experts have already concluded the feasibility of, and prepared a roadmap for, the transition of

Utah's all-purpose energy systems (for electricity, transportation, heating/cooling, and industry) to a 100% renewable portfolio by 2050, which, in addition to direct climate benefits, will reduce air pollution and save lives and costs associated with air pollution.

F. A DECLARATORY JUDGMENT THAT DEFENDANTS' FOSSIL FUEL DEVELOPMENT POLICY VIOLATES PLAINTIFFS' CONSTITUTIONAL RIGHTS WOULD REDUCE EMISSIONS AND PLAINTIFFS' INJURIES

203. A declaratory judgment in Youth Plaintiffs' favor would substantially influence and stop the conduct of Defendants in causing Youth Plaintiffs' injuries through their ongoing causation and worsening of Utah's air quality and climate crises. With Utah's climate and air quality crises already harming Youth Plaintiffs' health and safety and reducing their lifespans, continued maximization, promotion, and systematic authorization of fossil fuel development further harms and endangers Youth Plaintiffs in violation of their rights under Utah's Constitution. Consequently, the State's Fossil Fuel Development Policy, which directs Defendants to maximize, promote, and systematically authorize fossil fuel development, must be declared unconstitutional.

204. A declaratory judgment by Utah's courts regarding the constitutionality of government policy and conduct carries a presumption that government officials will abide by an authoritative judicial interpretation of Utah's Constitution. A declaratory judgment of the unconstitutionality of the State's Fossil Fuel Development Policy would invalidate the statutory provisions directing Defendants' harmful conduct and instruct Defendants

that their ongoing maximization, promotion, and systematic authorization of fossil fuel development is constitutionally impermissible. In response to a declaration of the unconstitutionality of the State's Fossil Fuel Development Policy, Defendants would align their conduct with the Court's ruling and stop maximizing, promoting, and systematically authorizing fossil fuel development in Utah, thereby reducing the air pollution causing Youth Plaintiffs' harms. Such reduction in emissions would reduce, and at least delay, the increasing prevalence, likelihood, and severity of the air quality and climate change harms injuring and threatening Youth Plaintiffs, thereby at least partially alleviating Youth Plaintiffs' injuries.

205. A declaration of the unconstitutionality of the State's Fossil Fuel Development Policy as codified and implemented would end Defendants' ongoing pattern and practice of maximizing, promoting, and systematically authorizing fossil fuel production and development that is causing Plaintiffs' injuries.

VI. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

Violation of Youth Plaintiffs' Substantive Due Process Right to Life Under Article 1, Sections 1 and 7 of Utah's Constitution

206. Youth Plaintiffs hereby reallege and incorporate by reference each of the allegations set forth above.

207. By and through the State's Fossil Fuel Development Policy, Defendants affirmatively maximize, promote, and systematically authorize fossil fuel development in Utah, causing air pollution and resulting dangerous air

quality that is harming Youth Plaintiffs, substantially reducing their lifespans and the number of healthy years in their lives.

208. Article 1, section 7 of the Utah Constitution protects persons from government policies and conduct that deprive them of life without due process of law. The right to life in Article 1, section 7 of Utah's Constitution is a fundamental right. The right to life is the most fundamental right protected by Utah's Constitution. *State v. Phillips*, 540 P.2d 936, 940 (Utah 1975), *disavowed on other grounds by State v. Taylor*, 664 P.2d 439 (Utah 1983).

209. When determining the meaning of a constitutional provision, other provisions dealing generally with the same topic assist in arriving at a proper interpretation of the constitutional provision at issue. *In re Worthen*, 926 P.2d 853, 866-67 (Utah 1996). Article 1, section 7 and Article 1, section 1 of Utah's Constitution deal generally with the same topic. Both provisions concern protection of the right to life. Under Article 1, section 1, the right to life protected by Utah's constitution encompasses the right to "enjoy" life. Utah Const. Art. 1, § 1. The right of all persons to "enjoy . . . their lives" is "inherent and inalienable." Utah Const. Art. 1, § 1.

210. Diminishment of and significant endangerment of a person's health and safety significantly reduces their ability to enjoy their life. A person's reasonable security in their health and safety is necessary to "enjoy . . . their lives[.]" Utah Const. Art. 1, § 1.

211. The words "lives" in Article 1, section 1 and "life" in Article 1, section 7 of Utah's Constitution are constitutional terms and are to be taken in their broadest sense. *McGrew v. Indus. Comm'n*, 85 P.2d 608, 610 (Utah 1938).

212. The protections against governmental deprivations of life in Article 1, sections 1 and 7 of Utah's Constitution are implicated by government policies and conduct that substantially reduce a person's lifespan. The protections against governmental deprivations of life in Article 1, sections 1 and 7 of Utah's Constitution are implicated by government policies and conduct that substantially reduce the number of healthy years in a person's life such that their ability to enjoy such years is substantially diminished.

213. The protections against governmental deprivations of life afforded in Article 1, sections 1 and 7 of Utah's Constitution restrict government from implementing policies and conduct that substantially reduce a person's lifespan, unless such policies and conduct are narrowly tailored to achieve a compelling government interest. The protections against governmental deprivations of life afforded in Article 1, sections 1 and 7 of Utah's Constitution restrict government from implementing policies and conduct that substantially reduce the number of healthy years in a person's lifespan, unless such policies and conduct are narrowly tailored to achieve a compelling government interest.

214. Utah's history and traditions reflect strong constitutional protections for the lives of youth and children.

215. The State has a compelling interest in protecting the lives and longevity of youth and children. The protection of human life is among the primary purposes for which government exists. Government policies and conduct that substantially reduce the lifespans of their citizens, unless narrowly

tailored to achieve a compelling government interest, betray the purpose for which governments are founded.

216. Defendants have codified a State Fossil Fuel Development Policy to maximize, promote, and systematically authorize the development of fossil fuels in Utah. By implementing the State's Fossil Fuel Development Policy, Defendants have caused and contributed to, and continue to cause and contribute to dangerous air quality in Utah, substantially reducing Youth Plaintiffs' lifespans in violation of their right to life. By implementing the State's Fossil Fuel Development Policy, Defendants have caused and contributed to, and continue to cause and contribute to dangerous air quality in Utah, substantially reducing the number of healthy years in Youth Plaintiffs' lifespans in violation of their right to life.

217. Defendants' Fossil Fuel Development Policy is not narrowly tailored to achieve any underlying compelling state interest. Defendants' Fossil Fuel Development Policy is not narrowly tailored to providing adequate, reliable, or affordable energy. Defendants' Fossil Fuel Development Policy is not narrowly tailored to supporting Utah's economy. Defendants' Fossil Fuel Development Policy is not narrowly tailored to raising revenue. Technologically and economically feasible means of providing adequate, reliable, and affordable energy; supporting economic development; and raising revenue are available which do not substantially reduce Utahns' lifespans or the number of healthy years in Utahns' lives, including those of Youth Plaintiffs.

218. Defendants' Fossil Fuel Development Policy is not rationally related to any legitimate government interest. The purpose of the government's role in resource and energy development is to extend, protect, and promote human life, health, and wellbeing, not to harm and reduce the lifespans of Utah's residents. When alternative means of providing energy, supporting the economy, and raising revenue are technologically and economically feasible, it is not rational to cause harm to children's and youth's lives and lifespans. The climate changes and dangerous air quality resulting from the development and combustion of fossil fuels undermine Utah's economy.

219. An actual controversy of a justiciable nature exists between Youth Plaintiffs and Defendants concerning whether Defendants' Fossil Fuel Development Policy impermissibly infringes upon Youth Plaintiffs' constitutional rights to life.

220. Youth Plaintiffs are entitled to a declaration by this Court that Defendants' Fossil Fuel Development Policy infringes upon Youth Plaintiffs' rights to life secured by Article 1, sections 1 and 7 of the Utah Constitution.

221. If necessary, Youth Plaintiffs are also entitled to such further relief as may be appropriate to ensure that Defendants cease their affirmative violations of Youth Plaintiffs' rights to life.

SECOND CAUSE OF ACTION

Violation of Youth Plaintiffs' Substantive Due Process Right to Liberty Under Article 1, Sections 1 and 7 of Utah's Constitution

222. Youth Plaintiffs hereby reallege and incorporate by reference each of the allegations set forth above.

223. By and through the State's Fossil Fuel Development Policy, Defendants have and continue to affirmatively maximize, promote, and systematically authorize fossil fuel development in Utah, causing air pollution and resulting dangerous air quality and climate change that is harming and endangering Youth Plaintiffs' health and safety.

224. Article 1, section 7 of the Utah Constitution protects persons from government policies and conduct that deprive them of liberty without due process of law.

225. Article 1, section 7 and Article 1, section 1 of Utah's Constitution deal generally with the same topic. Both provisions concern protection of liberty. Under Article 1, section 1, the right to liberty protected by Utah's constitution encompasses the right to "enjoy" liberties. Utah Const. Art. 1, § 1. The right of all persons to "enjoy . . . their liberties" is "inherent and inalienable." Utah Const. Art. 1, § 1.

226. The words "liberties" in Article 1, section 1 and "liberty" in Article 1, section 7 of Utah's Constitution are constitutional terms and are to be taken in their broadest sense. *McGrew v. Indus. Comm'n*, 85 P.2d 608, 610 (Utah 1938).

227. The liberty protected by Article 1, sections 1 and 7 of the Utah Constitution is not limited to the exercise of rights specifically enumerated in the Utah Constitution. The enumeration of rights in the Utah Constitution "shall not be construed to impair or deny others retained by the people." Utah Const. Art. 1, § 25.

228. In addition to the rights specifically enumerated, the Utah Constitution protects rights that are "natural," "intrinsic," or "prior" in the sense that the

Utah Constitution presupposes them. *In re J.P.*, 648 P.2d 1364, 1373 (Utah 1982). The protection of such inherent, presupposed rights is one of the basic principles for which organized government exists. Rights which are not specifically enumerated in Utah's Constitution are considered fundamental if they are rooted in history and the common law and are so fundamental to our society and so basic to our constitutional order as to be implicit in the concept of liberty.

229. The liberty protected under Article 1, sections 1 and 7 of Utah's Constitution includes a person's right to be free from government conduct that substantially endangers their health and safety. The right to be free from government conduct that substantially endangers one's health and safety is a fundamental right. Article 1, sections 1 and 7 of Utah's Constitution restrict government from implementing policies and conduct that substantially endanger a person's health and safety, unless such policies and conduct are narrowly tailored to achieve a compelling government interest.

230. The right to be free from government conduct that substantially endangers a person's health and safety is rooted in Utah's history and common law. The government of the Territory of Utah afforded, and the State of Utah has afforded since statehood, statutory and common law protection from conduct that endangers health and safety.

231. The right to be free from government conduct that substantially endangers an individual's health and safety is so fundamental to our society and so basic to our constitutional order as to be implicit in the concept of liberty

protected under Article 1, sections 1 and 7. It "is the universally recognized right of the community in all civilized governments" to "be protected" against "impairment or imperilment" of health and safety, "a protection which the government not only has a right to vouchsafe to the citizens, but which it is its duty to extend in the exercise of its police power." *Olsen v. Hayden Holding Co.*, 70 P.2d 463, 465 (Utah 1937) (quoting *City of Seattle v. Hinckley*, 40 Wash. 468, 471 (1905)).

232. Utah's history and traditions reflect strong constitutional protections for the health and safety of youth and children.

233. The State has a compelling interest in protecting the health and safety of youth and children. The protection of health and safety is among the primary purposes for which government exists. Government policies and conduct that substantially endanger the health and safety of its citizens, unless narrowly tailored to achieve a compelling government interest, betray the purpose for which governments are founded.

234. Defendants have codified a State Fossil Fuel Development Policy to maximize, promote, and systematically authorize the development of fossil fuels in Utah. By implementing the State's Fossil Fuel Development Policy, Defendants have caused and contributed to, and continue to cause and contribute to dangerous levels of air pollution, causing and contributing to dangerous air quality and climate change, harming Plaintiffs in violation of their right to be free from government conduct that substantially endangers their health and safety.

235. Defendants' Fossil Fuel Development Policy is not narrowly tailored to achieve any underlying compelling state interest. Defendants' Fossil Fuel Development Policy is not narrowly tailored to providing adequate, reliable, or affordable energy. Defendants' Fossil Fuel Development Policy is not narrowly tailored to supporting Utah's economy. Defendants' Fossil Fuel Development Policy is not narrowly tailored to raising revenue. Technologically and economically feasible means of providing adequate, reliable, and affordable energy; supporting economic development; and raising revenue are available which do not substantially harm and endanger the health and safety of Utahns, including Youth Plaintiffs.

236. Defendants' Fossil Fuel Development Policy is not rationally related to any legitimate government interest. The purpose of the government's role in resource and energy development is to extend, protect, and promote human life, health, and wellbeing, not to harm the health and safety of Utah's residents. When alternative means of providing energy, supporting the economy, and raising revenue are technologically and economically feasible, it is not rational to cause harm to children's and youth's health and safety. The dangerous climate changes and air quality resulting from the development and combustion of fossil fuels undermine Utah's economy.

237. An actual controversy of a justiciable nature exists between Youth Plaintiffs and Defendants concerning whether Defendants' Fossil Fuel Development Policy impermissibly infringes upon Youth Plaintiffs' constitutional rights to be free from government conduct that substantially endangers their health and safety.

238. Youth Plaintiffs are entitled to a declaration by this Court that Defendants' Fossil Fuel Development Policy infringes upon Youth Plaintiffs' rights, secured by Article 1, sections 1 and 7 of the Utah Constitution, to be free from government conduct that substantially endangers their health and safety.

239. If necessary, Youth Plaintiffs are also entitled to such further relief as may be appropriate to ensure that Defendants cease their affirmative violations of Youth Plaintiffs' rights to be free from government conduct that substantially endangers their health and safety.

VII. PRAYER FOR RELIEF

WHEREFORE, Youth Plaintiffs respectfully request that this Court enter judgment in their favor and against each of the Defendants, and grant them the following relief:

a. Adjudge and declare that Utah Code section 40-10-1(1) violates Youth Plaintiffs' right to life under Article 1, sections 1 and 7 of the Utah Constitution;

b. Adjudge and declare that Utah Code section 40-10-1(1) violates Youth Plaintiffs' right to be free from government conduct that substantially endangers their health and safety under Article 1, sections 1 and 7 of the Utah Constitution;

c. Adjudge and declare that Utah Code section 40-10-17(2)(a) violates Youth Plaintiffs' right to life under Article 1, sections 1 and 7 of the Utah Constitution;

d. Adjudge and declare that Utah Code section 40-10-17(2)(a) violates Youth Plaintiffs' right to be free from government conduct that substantially endangers their health and safety under Article 1, sections 1 and 7 of the Utah Constitution;

e. Adjudge and declare that Utah Code section 40-6-1 violates Youth Plaintiffs' right to life under Article 1, sections 1 and 7 of the Utah Constitution;

f. Adjudge and declare that Utah Code section 40-6-1 violates Youth Plaintiffs' right to be free from government conduct that substantially endangers their health and safety under Article 1, sections 1 and 7 of the Utah Constitution;

g. Adjudge and declare that Utah Code section 40-6-13 violates Youth Plaintiffs' right to life under Article 1, sections 1 and 7 of the Utah Constitution;

h. Adjudge and declare that Utah Code section 40-6-13 violates Youth Plaintiffs' right to be free from government conduct that substantially endangers their health and safety under Article 1, sections 1 and 7 of the Utah Constitution;

i. Adjudge and declare that Utah Code section 79-6-301(1)(b)(i) violates Youth Plaintiffs' right to life under Article 1, sections 1 and 7 of the Utah Constitution;

j. Adjudge and declare that Utah Code section 79-6-301(1)(b)(i) violates Youth Plaintiffs' right to be free from government conduct that

substantially endangers their health and safety under Article 1, sections 1 and 7 of the Utah Constitution;

k. Adjudge and declare that Defendants' pattern and practice of affirmative actions in implementing the State's Fossil Fuel Development Policy by maximizing, promoting, and systematically authorizing the development of fossil fuels violates Youth Plaintiffs' right to life under Article 1, sections 1 and 7 of the Utah Constitution;

l. Adjudge and declare that Defendants' pattern and practice of affirmative actions in implementing the State's Fossil Fuel Development Policy by maximizing, promoting, and systematically authorizing the development of fossil fuels violates Youth Plaintiffs' right to be free from government conduct that substantially endangers their health and safety under Article 1, sections 1 and 7 of the Utah Constitution;

m. Award Youth Plaintiffs their reasonable attorneys' fees and costs; and

n. Award Youth Plaintiffs such further or alternative relief as the Court deems just and equitable.

Respectfully submitted this 15th day of March, 2022.

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ADDENDUM B

Constitutional Provisions

Utah Const. art. I, § 1

All persons have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right.

Utah Const. art. I, § 7

No person shall be deprived of life, liberty or property, without due process of law.

Utah Const. art. I, § 11

All courts shall be open, and every person, for an injury done to the person in his or her person, property, or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, with or without counsel, any civil cause to which the person is a party.

Utah Const. art. I, § 27

Frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government.

Utah Const. art. V, § 1

The powers of the government of the State of Utah shall be divided into three distinct departments, the Legislative, the Executive, and the Judicial; and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted.

Utah Const. art. VI, § 1

(1) The Legislative power of the State shall be vested in:
(a) a Senate and House of Representatives which shall be designated the Legislature of the State of Utah; and
(b) the people of the State of Utah as provided in Subsection (2).
(2)
(a)
(i) The legal voters of the State of Utah, in the numbers, under the conditions, in the manner, and within the time provided by statute, may:
(A) initiate any desired legislation and cause it to be submitted to the people for adoption upon a majority vote of those voting on the legislation, as provided by statute; or
(B) require any law passed by the Legislature, except those laws passed by a two-thirds vote of the members elected to each house of the Legislature, to be submitted to the voters of the State, as provided by statute, before the law may take effect.
(ii) Notwithstanding Subsection (2)(a)(i)(A), legislation initiated to allow, limit, or prohibit the taking of wildlife or the season for or method of taking wildlife shall be adopted upon approval of two-thirds of those voting.
(b) The legal voters of any county, city, or town, in the numbers, under the conditions, in the manner, and within the time provided by statute, may:
(i) initiate any desired legislation and cause it to be submitted to the people of the county, city, or town for adoption upon a majority vote of those voting on the legislation, as provided by statute; or
(ii) require any law or ordinance passed by the law making body of the county, city, or town to be submitted to the voters thereof, as provided by statute, before the law or ordinance may take effect.

Utah Const. art. VIII, § 1

The judicial power of the state shall be vested in a Supreme Court, in a trial court of general jurisdiction known as the district court, and in such other courts as the Legislature by statute may establish. The Supreme Court, the district court, and such other courts design

Utah Const. art. VIII, § 2

The Supreme Court shall be the highest court and shall consist of at least five justices. The number of justices may be changed by statute, but no change shall have the effect of removing a justice from office. A chief justice shall be selected from among the justices of the Supreme Court as provided by statute. The chief justice may resign as chief justice without resigning from the Supreme Court. The Supreme Court by rule may sit and render final judgment either en banc or in divisions. The court shall not declare any law unconstitutional under this constitution or the Constitution of the United States, except on the concurrence of a majority of all justices of the Supreme Court. If a justice of the Supreme Court is disqualified or otherwise unable to participate in a cause before the court, the chief justice, or in the event the chief justice is disqualified or unable to participate, the remaining justices, shall call an active judge from an appellate court or the district court to participate in the cause.

Utah Const. art. VIII, § 5

The district court shall have original jurisdiction in all matters except as limited by this constitution or by statute, and power to issue all extraordinary writs. The district court shall have appellate jurisdiction as provided by statute. The jurisdiction of all other courts, both original and appellate, shall be provided by statute. Except for matters filed originally with the Supreme Court, there shall be in all cases an appeal of right from the court of original jurisdiction to a court with appellate jurisdiction over the cause.

ADDENDUM C

Statutes

Utah Code § 40-6-1

It is declared to be in the public interest to foster, encourage, and promote the development, production, and utilization of natural resources of oil and gas in the state of Utah in such a manner as will prevent waste; to authorize and to provide for the operation and development of oil and gas properties in such a manner that a greater ultimate recovery of oil and gas may be obtained and that the correlative rights of all owners may be fully protected; to provide exclusive state authority over oil and gas exploration and development as regulated under the provisions of this chapter; to encourage, authorize, and provide for voluntary agreements for cycling, recycling, pressure maintenance, and secondary recovery operations in order that the greatest possible economic recovery of oil and gas may be obtained within the state to the end that the land owners, the royalty owners, the producers, and the general public may realize and enjoy the greatest possible good from these vital natural resources.

Utah Code § 40-6-13

This act shall never be construed to require, permit or authorize the board or any court to make, enter or enforce any order, rule, regulation, or judgment requiring restriction of production of any pool or of any well (except a well drilled in violation of Section 40-6-6 hereof) to an amount less than the well or pool can produce unless such restriction is necessary to prevent waste and protect correlative rights, or the operation of a well without sufficient oil or gas production to cover current operating costs and provide a reasonable return, without regard to original drilling costs.

Utah Code § 40-10-1(1)

The Utah Legislature finds that:

(1) Coal mining operations presently contribute significantly to the nation's energy requirements; surface coal mining constitutes one method of extraction of the resource; the overwhelming percentage of Utah's coal reserves can only be extracted by underground mining methods; and it is,

therefore, essential to the national interest to insure the existence of an expanding and economically healthy underground coal mining industry.

Utah Code § 40-10-17(2)(a)

(1) Any permit issued pursuant to this chapter to conduct surface coal mining shall require that the surface coal mining operations will meet all applicable performance standards of this chapter, and such other requirements as the division shall promulgate.
(2) General performance standards shall be applicable to all surface coal mining and reclamation operations and shall require the operations as a minimum to:
    (a) Conduct surface coal mining operations so as to maximize the utilization and conservation of the solid fuel resource being recovered so that reaffecting the land in the future through surface coal mining can be minimized.

Utah Code § 79-6-301(1)(b)(i)

(1) It is the policy of the state that:
    (b) Utah shall promote the development of:
        (i) nonrenewable energy resources, including natural gas, coal, oil, oil shale, and oil sands;

ADDENDUM D

Memorandum Decision and Order of the District Court, November 9, 2022
R.408-19

[ATTACHED]

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

NATALIE R., a Minor, by and through her Guardian, DANIELLE ROUSSEL; et al., **Plaintiffs,** **vs.** **STATE OF UTAH, et al.,** **Defendants.**	**MEMORANDUM DECISION AND ORDER** **Case No. 220901658** **Honorable Robert P. Faust**

The Court has before it Defendants' Motion to Dismiss. Oral argument was held with respect to the Motion on November 4, 2022. Following the hearing, the matter was taken under advisement. After reviewing the record, the Court hereby enters the following ruling:

BACKGROUND

Plaintiffs are children, appearing through their guardians, and one adult, who assert they are uniquely vulnerable to and face disproportionate harms to their physical and psychological health, safety, and development as a result of Utah's development and combustion of fossil fuels. Specifically, Plaintiffs allege the State of Utah is violating their substantive due process rights protected by Utah Constitution, Article I, Sections 1 and 7, by impinging on Plaintiffs' right to life.

LEGAL STANDARD

The State Defendants seek dismissal of Plaintiffs' claims pursuant to Utah R. Civ. P. 12(b)(1) and (6). Rule 12(b)(6) permits dismissal for "failure to state a claim on which relief can be granted." "A district court should grant a rule 12(b)(6) motion only when, 'assuming the truth of the allegations' that a party has made and 'drawing all reasonable inferences therefrom in the light most favorable' to that party, 'it is clear that [the party] is not entitled to relief.'" *Calsert v. Est. of Flores,* 2020 UT App 102, ¶ 9, 470 P.3d 464, 468. (Internal citations omitted).

RULING

After reviewing the record, and while Plaintiffs have a valid concern, the Court finds Plaintiffs' claims are precluded because (1) the political question doctrine prevents the Court from creating climate change and fossil fuels policy; (2) Plaintiffs' requested equitable relief cannot effectively redress their alleged harms; and (3) the Court should not extend the substantive due process doctrine into areas where it has not previously been applied, such as global climate change and fossil fuels policy.

POLITICAL QUESTION DOCTRINE

"The Utah Constitution explicitly establishes separation of powers between the legislative, judicial, and executive branches at the state level." *Skokos v. Corradini,* 900 P.2d 539, 542 (Utah Ct. App. 1995). Specifically, the Utah Constitution provides:

> The powers of the government of the State of Utah shall be divided into three distinct departments, the Legislative, the Executive, and the Judicial; and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases herein expressly directed or permitted. Utah Const. art. V, § 1.

Utah courts rely on federal case law when interpreting and applying the political question doctrine. *Id.* This in mind, in *Baker v. Carr*, 369 U.S. 186, 217 (1962), the United States Supreme Court set forth a six-prong test for determining when the doctrine applies:

> Prominent on the surface of any case held to involve a political question is found [1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of judicially discoverable and manageable standards for resolving it; or [3] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [4] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or [5] an unusual need for unquestioning adherence to a political decision already made; or [6] the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Similar to this matter before this Court, the Washington Court of Appeals considered a similar case:

> The appellants are 13 youths (the Youths) between the ages of 8 and 18 who sued the State of Washington, Governor Jay Inslee, and various state agencies and their secretaries or directors (collectively the State) seeking declaratory and injunctive relief. The Youths alleged that the State "injured and continue[s] to injure them by creating, operating, and maintaining a fossil fuel-based energy and transportation system that [the State] knew would result in greenhouse gas ("GHG") emissions, dangerous climate change, and resulting widespread harm." To this end, the Youths asserted substantive due process, equal protection, and public trust doctrine claims, among others. They asked the trial court to declare that they have "fundamental and inalienable constitutional rights to life, liberty, property, equal protection, and a healthful and pleasant environment, which includes a stable climate system that sustains human life and liberty." *Aji P. by & through Piper v. State*, 16 Wash. App. 2d 177, 183, 480 P.3d 438, 444–45, *review denied sub nom. Aji P. v. State,* 198 Wash. 2d 1025, 497 P.3d 350 (2021).

The Court's holding made clear that the issues raised by Plaintiffs are non-justiciable political questions:

> We firmly believe that the right to a stable environment should be fundamental. In addition, we recognize the extreme harm that greenhouse gas emissions inflict on the environment and its future stability. However, it would be a violation of the separation of powers doctrine for the court to resolve the Youths' claims. Therefore, we affirm the superior court's order dismissing the complaint. *Id.* at 445.

The Court noted that "the resolution of the Youths' claims is constitutionally committed to the legislative and executive branches. 'Article 2, section 1, of the Washington State Constitution vests all legislative authority in the legislature and in the people,' through the power of initiative and referendum." *Id.* at 477.

Utah's Constitution is not materially different. As in Washington, the power to create and repeal environmental legislation is constitutionally committed to the political branches or the people directly in Utah.

Similarly, the Ninth Circuit, when it considered a case where minor children via through their guardians also asked for a court order declaring the federal government's fossil fuels policy unconstitutional and ordering the government to address global climate change, concluded:

> The plaintiffs claim that the government has violated their constitutional rights, including a claimed right under the Due Process Clause of the Fifth Amendment to a "climate system capable of sustaining human life." The central issue before us is whether, even assuming such a broad constitutional right exists, an Article III court can provide the plaintiffs the redress they seek—an order requiring the government to develop a plan to "phase out fossil fuel emissions and draw down excess atmospheric CO2." Reluctantly, we conclude that such relief is beyond our constitutional power. Rather, the plaintiffs' impressive case for redress must be presented to the political branches of government. *Juliana v. United States,* 947 F.3d 1159, 1164–65 (9th Cir. 2020).

Plaintiffs rely on a Montana District Court case distinguishing *Juliana* based on the claim that declaratory relief might be acceptable but injunctive relief was not. (Op. at 4.) However, that Court observed, "Article II, Section 3 of the Montana Constitution does provide a fundamental right to a clean and healthy environment, and that parties such as the Plaintiffs are entitled to bring a direct action in court to enforce that right." *Held v. Montana*, Order on Mot. to Dism. at 23, Cause No. CDV-2020-307, August 4, 2021. Utah's Constitution has no parallel to this right. And as the *Aji P.* Court wrote, "Because our state constitution does not address state responsibility for climate change, it is up to the legislature, not the judiciary, to decide whether [—and to what

extent—] to act as a matter of public policy." 16 Wash. App. 2d at 192. The argument that declaratory relief can address climate change also failed in the Oregon Supreme Court and Washington Court of Appeals. *Chernaik v. Brown,* 367 Or. 143 (2020); *Aji P.*, 16 Wash. App. 2d 177.

The Alaska Supreme Court also reached the same conclusion as *Juliana*:

> A number of young Alaskans — including several Alaska Natives — sued the State, alleging that its resource development is contributing to climate change and adversely affecting their lives. They sought declaratory and injunctive relief based on allegations that the State has, through existing policies and past actions, violated . . . their individual constitutional rights. The superior court dismissed the lawsuit, concluding that the injunctive relief claims presented non-justiciable political questions better left to the other branches of government and that the declaratory relief claims should, as a matter of judicial prudence, be left for actual controversies arising from specific actions by Alaska's legislative and executive branches. The young Alaskans appeal, raising compelling concerns about climate change, resource development, and Alaska's future. But we conclude that the superior court correctly dismissed their lawsuit. *Sagoonick v. State*, 503 P.3d 777, 782 (Alaska 2022), *reh'g denied* (Feb. 25, 2022).

Moreover, a federal district court in Pennsylvania considering a case where minor children filed an action against federal authorities claiming that the federal government had violated their due process rights to life and "personal bodily integrity" by "allowing and permitting fossil fuel production, consumption and its associated CO2 pollution," held, "[b]ecause I have neither the authority nor the inclination to assume control of the Executive Branch, I will grant Defendants' Motion" to Dismiss. *Clean Air Council v. United States*, 362 F.Supp.3d 237 (2019).

Additionally, the Iowa Supreme Court also considered a case where environmentally concerned plaintiffs asked the courts to amend state policies regarding water quality. The court held that these were non-justiciable policy questions:

> In our view, stating that the legislature must "broadly protect[ ] the public's use of navigable waters" provides no meaningful standard at all. Different uses matter in different degrees to different people. How does one balance farming against swimming and kayaking? How should additional costs for farming be weighed

> against additional costs for drinking water? Even if courts were capable of deciding the correct outcomes, they would then have to decide the best ways to get there. Should incentives be used? What about taxes? Command and-control policies? In sum, these matters are not "claims of legal right, resolvable according to legal principles, [but] political questions that must find their resolution elsewhere." *Iowa Citizens for Community Improvement v. State*, 962 N.W.2d 780, 796-97 (2021).

Neither Utah's Constitution, nor the United States Constitution, addresses anything about fossil fuels or global climate change which would permit the Court to grant a judicial remedy.

Next, Plaintiffs fail to satisfy the second prong of the *Baker* test, which requires "judicially discoverable and manageable standards for resolving" the issues before the Court. *Baker*, 369 U.S. at 217. In the present case, Plaintiffs ask the Court to declare unconstitutional statutes governing the production of fossil fuels. Such policy decisions would require the Court to "decide matters beyond the scope of our authority with resources not available to the judiciary." *Aji P. by & through Piper*, 16 Wash. App. 2d at 189–90. While Plaintiffs cite the case of *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996), for the proposition that a "mathematically precise standard" is not necessary-in the instant, such is clearly distinguishable, as in the present case, NO guiding or limiting principles are provided.

Finally, the fourth *Baker* factor cautions against, "the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government[.]" *Baker*, 369 U.S. at 217. Energy policy, fossil fuels development, and global climate change are paradigm examples of "matters of the greatest societal interest [that] involving a grand, overarching balance of important public policies [and] are beyond the capacity of courts to resolve." *Gregory v. Shurtleff*, 2013 UT 18, 299 P.3d 1098, 1132 n.29.

In this case, Plaintiffs ask the Court to declare legislative acts unconstitutional based on things that are not expressed in the constitution. They seek a different weighing of the interests involved, though the Legislature has already balanced the interests and created policy through

statute. Striking down the legislature's fossil fuel policies would be contrary to our constitutional system and violate the separation of powers.

PLAINTIFFS CLAIMS ARE NOT REDRESSABLE

There are three (3) requirements for traditional standing in Utah. "'First, plaintiffs must assert that they have been or will be 'adversely affected by the [challenged] actions.' Second, they must 'allege a causal relationship between [their] injury [and] the [challenged] actions.' And third, 'the relief requested must be substantially likely to redress the injury claimed.' 'E]ach step must be demonstrated in order to confirm standing.'" *S. Utah Wilderness All. v. Kane Cnty. Comm'n*, 2021 UT 7, ¶ 23, 484 P.3d 1146, 1155 (Internal citations omitted). *See also Carlton v. Brown*, 2014 UT 6,123, 323 P.3d 571 ("Utah's standing requirements are similar to the federal court system in that they contain the same three basic elements—injury, causation, and redressability").

In the present case, Plaintiffs ask the Court to declare policy explanations in the two (2) statutes unconstitutional, without addressing the operative language of the statutes. The Court should not, however, declare a constitutional violation without a "'limited and precise' standard discernible in the Constitution for redressing the asserted violation." *Juliana,* 947 F.3d at 1173 (*quoting Rucho v. Common Cause, 139 S. Ct. 2484, 2508 (2019)* (the court was unable to adopt a standard for gerrymandering cases that was not "relatively easy to administer as a matter of math")). As noted above, Plaintiffs offer no such precise standard for redressability.

Moreover, Plaintiffs have not shown their proposed declaration will have any effect on carbon emissions in Utah. Plaintiffs offer no analysis explaining how any of the challenged statutes might be used to interpret operative requirements in a manner that would reduce fossil fuel consumption. Indeed, in the one case cited by Plaintiffs on this point, the court found that, "it is

likely that if the governmental action is declared unconstitutional, the adverse impact on *Jenkins* will be relieved." *Jenkins v. Swan*, 675 P.2d 1145, 1153 (Utah 1983). The same is not true here.

Indeed, Plaintiffs admit that "Defendants' authority to require permits for and regulate fossil fuel development would remain intact," if their request is granted, (Op. at 17), and that "They do not ask this Court to determine what Utah's policy should be, or to order the State to adopt or implement any specific policy, or to prepare or effectuate any remedial plan." *Id.* at 4. "Redressability requires that the court be able to afford relief through the exercise of its power, not through the persuasive or even awe-inspiring effect of the opinion explaining the exercise of its power." *Nova Health Sys. v. Gandy*, 416 F.3d 1149, 1159 (10th Cir. 2005). Without knowing how legal requirements will change, Plaintiffs cannot promise it will have any effect at all.

Plaintiffs cite *Bennion v. ANR Prod. Co.*, 819 P.2d 343, 346-47 & n.5 (Utah 1991), as an example of a case where the Utah Supreme Court issued a "declaration of public interest." The *Bennion* Court interpreted operative provisions of Utah Code Ann. § 40–6–6(5). *Id.* at 345-47. However, predicting how courts might interpret the operative provisions after the legislative intent elements are removed would be purely speculative, because all operative provisions would survive the requested relief. In fact, the *Bennion* Court refused to apply the "declaration of public interest" to deny "imposition of a statutory non-consent penalty" as plaintiffs requested. *Id.*at 352.

Plaintiffs' claimed harms would require a global solution, and a court attempting to address climate change would be forced to retain jurisdiction and implement a recovery plan. Indeed, even if the Court were to enter a declaration regarding the constitutionality of the challenged provisions in Plaintiffs' favor, without a concrete climate recovery plan, remediation is unlikely, thus failing the redressability requirement.

Even assuming, for the sake of discussion, that Utah's oil and gas statutes were declared unconstitutional in total, it would not result in a cessation of fossil fuel development or in the reduction of emissions. If Plaintiffs prevail in invalidating the Act, the common law rule of capture would become the legal principle dictating oil and gas development in Utah and the unregulated production of hydrocarbons would likely increase. *See P*hillip W. Lear, Thomas A. Mitchell, & William R. Richards, Modern Oil & Gas Conservation Practice: And you Thought the Law of Capture was Dead? 41 Rocky Mtn. Min. Law Inst. 17-1, 17-9 at § 17.02[5](1995) (scholarly article compiling articles and cases discussing the common law rule of capture); Phillip Wm. Lear, Utah Oil and Gas Conservation Law and Practice, 43B RMMLF-INST 5C (1997)(article detailing oil and gas conservation practice in Utah). Prior to 1955, oil and gas development in Utah was governed by the common law rule of capture.

SUBSTANTIVE DUE PROCESS AND FOSSIL FUELS POLICY

There is no precedent for extending the doctrine of substantive due process into policy decisions regarding the development of fossil fuels. Courts have uniformly concluded substantive due process does not apply to fossil fuels policy. *See e.g. Exxon Corp. v. Governor of Maryland,* 437 U.S. 117, 124 (1978)(*quoting Ferguson v. Skrupa,* 372 U.S. 726, 731 (1963)); *Bullseye Glass Co. v. Brown*, 366 F.Supp.3d 1190 (D. Oregon), *see also Wildgrass Oil & Gas Comm. v. Colorado*, 447 F. Supp. 3d 1051, 1068 (D. Colo. 2020), aff'd, 843 F. App'x 120 (10th Cir. 2021). Moreover, the Supreme Court also cited with approval a portion of a First Circuit case holding that the federal Coal Act did not infringe substantive due process rights because it was economic legislation and did not abridge fundamental rights. *E. Enterprises v. Apfel, 5*24 U.S. 498, 517 (1998)(*citing and reversing on other grounds Eastern Enterprises v. Chater, 1*10 F.3d 150 (C.A.1 1997)).

The Supreme Court has, "regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, 'deeply rooted in this Nation's history and tradition[.]'" *Washington v. Glucksberg,* 521 U.S. 702, 720–21 (1997). It protects only those freedoms "implicit in the concept of ordered liberty[.]" *Id.* A new policy proposal to cease or significantly curtail fossil fuel development is not implicit in this nation's history and traditions and is not involved with the concept of ordered liberty. Plaintiffs admit that fossil fuel development in Utah is "historic and ongoing." (Complaint ¶ 6.)

Further, the Due Process Clause does not require the State to protect against private actors. The Supreme Court has recognized that "the Due Process Clause does not require the State to provide its citizens with particular protective services[.]" *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 196–97 (1989). "[N]othing in the language of the Due Process Clause itself requires the State to protect the life, liberty and property of its citizens against invasion by private actors." *Id.* at 195. "The [Due Process] Clause is phrased as a limitation on the State's power to act, not as a guarantee of certain minimal levels of safety and security." *Id.* at 195. The "purpose [of the Due Process Clause] was to protect the people from the State, not to ensure that the State protected them from each other. The Framers were content to leave the extent of governmental obligation in the latter area to the democratic political processes." *Id.* at 196.

The United States District Court for the Eastern District of Pennsylvania specifically found that:

> Once again third parties—not the Government—are polluting the air. As I have discussed, "a State's failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause." DeShaney, 489 U.S. at 197, 109 S.Ct. 998. Accordingly, Plaintiffs have failed to state a claim based on a violation of their right to life or bodily integrity. *Clean Air Council*, 362 F.Supp.3d at 253.

Accordingly, the principle of limiting substantive due process to prevent policy decisions by judges is entirely consistent with the political question doctrine's limitations on the courts' authority.

OPEN COURTS

Finally, Defendants' arguments do not violate Utah's Open Courts protections. Plaintiffs cite *Jeffs v. Stubbs*, 970 P.2d 1234, 1250 (Utah 1998), for the proposition that courts must be accessible to all for the resolution of their disputes. (Op. at 7.) However, the right provided under the Open Courts Clause, "revolves around the judicial system, not the specific results of the judicial action." *Jeffs*, 970 P.2d at 1250. This Court is open to the Plaintiffs in this matter and their claims are being considered in this Motion to Dismiss. This does not, however, mean Plaintiffs have a right to proceed to discovery and trial absent a meritorious case.

BASED UPON THE FORGOING, Defendants' Motion to Dismiss is granted. Plaintiffs' claims are dismissed with prejudice.

This Memorandum Decision and Order constitutes the Order regarding the matters addressed herein. No further order is required.

DATED this 9th day of November 2022

BY THE COURT:

STATE OF UTAH THIRD DISTRICT COURT SALT LAKE COUNT

ROBERT P. FAUST
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that I mailed/emailed a true and correct copy of the foregoing Memorandum Decision and Order, to the following, this 9th day of November 2022:

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