In the Supreme Court of the State of Utah

NATALIE R., a minor by and through her guardian, DANIELLE ROUSSEL, et al., *Plaintiffs-Appellants,* v. State of Utah, et al., *Defendants-Appellees.*	No. 20230022-SC

Brief of Appellees

On appeal from a final decision of the Third Judicial District Court, Salt Lake County, Honorable Robert Faust, No. 220901658

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Current and Former Parties

Appellants/Plaintiffs

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, Kyla Rima

Represented by: Andrew L. Welle of Our Children's Trust and 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
The Office of Energy Development
Thom Carter,[1] State Energy Advisor Executive Director of the Office of Energy Development
Board of Oil, Gas, and Mining
Division of Oil, Gas, and Mining
John R. Baza,[2] Director of the Division of Oil, Gas, and Mining

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

[1] Mr. Carter has been succeeded by Gregory Todd as the Energy Advisor and Executive Director of the Department of Natural Resources.

[2] Mr. Baza has been succeeded as the director of the Division of Oil, Gas, and Mining by Mick Thomas.

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Introduction

The State's energy policy declares that Utahns shall have "adequate, reliable, affordable, sustainable, and clean" energy. Elected state leaders strive to balance those goals when making energy decisions. For now, those leaders have decided that fossil fuels remain a crucial component of a multi-faceted approach designed to ensure the State's energy needs are met. Unhappy with that reliance, Plaintiffs ask for a declaration that their constitutional rights are being violated by the State's fossil fuel policies and "pattern and practice" of conduct that implements those policies.

Plaintiffs have a right to disagree with the State's energy decisions. But Plaintiffs' complaint does not raise a justiciable issue that the courts can solve through declaratory relief. They have not pled a ripe controversy. And they can only speculate that the broad declaratory judgment they want will redress their injuries. Yet they still ask this Court to recognize new fundamental rights and declare a violation of those rights in the abstract. In other words, they want an advisory opinion to send a message to the political branches. This Court should deny that request and affirm the district court's dismissal of the complaint. Plaintiffs must instead direct their concerns to their elected representatives.

Statement of Issues

Issue 1: Whether this Court can affirm the district court's dismissal because Plaintiffs' claims are not ripe and the declaratory judgment they request is not substantially likely to redress their alleged injuries?

Preservation: Defendants preserved the redressability issue. R. 163-170, 256-260, 414-416. Defendants did not raise ripeness below, but that is an issue of subject matter jurisdiction, *Granite Sch. Dist. v. Young*, 2023 UT 21, ¶ 27, 537 P.3d 225, and those issues can be raised at any time, *In re Adoption of Baby E.Z.*, 2011 UT 38, ¶ 25, 266 P.3d 702. This court may also affirm "on any legal ground or theory apparent on the record," even if it "differs from that stated by the trial court." *First Equity Fed., Inc. v. Phillips Dev., LC,* 2002 UT 56, ¶ 11, 52 P.3d 1137.

Standard of review: A rule 12(b)(6) "motion to dismiss admits the facts alleged in the complaint but challenges plaintiff's right to relief based on those facts." *Oakwood Vill. LLC v. Albertsons, Inc.*, 2004 UT 101, ¶ 8, 104 P.3d 1226. A rule 12(b)(1) motion asks the court to dismiss a complaint for lack of subject matter jurisdiction. Utah R. Civ. P. 12(b)(1).

This Court reviews dismissals under either rule for correctness. *First Equity*, 2002 UT 56, ¶ 11; *Salt Lake Cnty. v. State*, 2020 UT 27, ¶ 14, 466 P.3d 158. It accepts the complaint's factual allegations as true, but it "need not accept extrinsic facts not pleaded" or "legal conclusions in contradiction of

the pleaded facts." *First Equity*, 2002 UT 56, ¶ 11; *see also Salt Lake Cnty.*, 2020 UT 27, ¶ 34.

Issue 2: Whether Plaintiffs have stated a claim for which relief can be granted when they have not alleged the violation of a specific fundamental right?

Preservation: Defendants preserved their argument that Plaintiffs had not pled a fundamental right and could not prevail on a substantive due process claim. R. 170-73, 242-45, 416-18.

Standard of review: Constitutional issues are questions of law that are reviewed for correctness. *Matter of Adoption of K.T.B.*, 2020 UT 51, ¶ 15, 472 P.3d 843.

Background

Plaintiffs sued the State of Utah, Governor Spencer Cox, the Department of Natural Resources (DNR), the Office of Energy Development (OED), Utah's Energy Advisor, the Board of Oil, Gas and Mining (BOGM), the Division of Oil Gas and Mining (DOGM), and DOGM's division director. R. 32-33.

Plaintiffs allege that the "past and continuing development" of fossil fuels in Utah causes dangerous air quality and climate change. R. 5-6. They claim that Utah's fossil fuel development policy, which is allegedly codified in five statutes, is partially responsible because it requires the State to

"maximiz[e], promot[e], and systematically authoriz[e] fossil fuel development." *Id.* They also allege the State has engaged and is engaging in a "pattern and practice of maximizing, promoting, and systematically authorizing" the development of fossil fuels. R. 36-38.

Plaintiffs' causes of action assert that the challenged statutes and conduct facially violate two fundamental due process rights under article I, sections 1 and 7 of the Utah Constitution: their "right to life" and their "right to be free from government conduct that substantially endangers their health and safety." R. 91-92, 408.

I. The challenged statutes

Plaintiffs challenge five statutory provisions that they collectively call the state's fossil fuel development policy:[3] Utah Code §§ 79-6-301(1)(b)(i), 40-10-1(1), 40-10-17(2)(a), 40-6-1, 40-6-13. R. 7. Those provisions come from different parts of the code relating to general energy policies, coal mining, and oil and gas drilling.

[3] Plaintiffs complain about select language from the statutes without the full text of the statute or related statutes. That does not mean this Court is limited to considering the language cited in the complaint. A court accepts a plaintiffs' factual allegations to be true on a motion to dismiss, but it does not have to accept their legal conclusions. *Osguthorpe v. Wolf Mtn. Resorts, L.C.*, 2010 UT 29, ¶ 10, 232 P.3d 999.

Section 79-6-301(1)(b)(i).[4] Plaintiffs allege this provision establishes Utah's policy to "promote the development of . . . nonrenewable energy sources . . . ." R. 35 (quoting Utah Code § 79-6-301(1)(b)(i)).

That subsection is just one part of a multi-faceted policy in section 79-6-301. The entire section reveals that the State's energy policy seeks "adequate, reliable, affordable, sustainable, and clean energy resources." Utah Code § 79-6-301(1)(a). "[P]romot[ing] the development of nonrenewable energy resources" is only one piece of meeting that goal. *Id.* § 79-6-301(1)(b)(i). Utah also promotes other resources, including "renewable energy sources, including geothermal, solar, wind, biomass, biofuel, and hydroelectric"; *id.* § 79-6-301(1)(b)(ii); "nuclear power," *id.* § 79-6-301(1)(b)(iii); and "alternative transportation fuels and technologies," *id.* § 79-6-301(1)(b)(iv).

Section 79-6-301 also declares that Utah shall "promote the use of clean energy sources by considering the emissions of an energy resource throughout" its "entire life cycle," *id.* § 79-6-301(1)(k), and "pursue energy conservation, energy efficiency, and environmental quality"; *id.* § 79-6-

[4] A 2024 bill has proposed substantially rewriting section 79-6-301 during the 2024 legislative session. As of the filing date, that bill hasn't been passed or signed by the governor. State Energy Policy Amendments, H.B. 374, State Energy Policy Amendments, *at* *https://le.utah.gov/~2024/bills/static/HB0374.html#79-6-301*. If it is, Plaintiffs' claims about this statute as written when they filed their lawsuit will be moot.

301(1)(f). The statute encourages state agencies "to conduct agency activities consistent with" everything in subsection (1), *id.* § 79-6-301(2), not just the "nonrenewable energy" provision.

Sections 40-10-1(1) and 40-10-17(2)(a). Plaintiffs also challenge two provisions from Utah's coal mining statutes. R. 34. They challenge subsection 40-10-1(1), which is a legislative finding that it is "essential to the national interest to insure the existence of an expanding and economically healthy underground coal mining industry." *Id.* § 40-10-1(1); Aplt. Br. at 42-43. The next subsection, which Plaintiffs do not challenge, finds that "[t]he expansion of coal mining . . . makes even more urgent the establishment of appropriate standards to minimize" environmental damage and "to protect the health and safety of the public." Utah Code § 40-10-1(2).

Section 40-10-1(1) is one subsection in a chapter authorizing BOGM and DOGM to regulate coal mining. *Id.* § 40-10-2(1). That chapter authorizes DOGM and BOGM to make rules and issue permits. *See id.* § 40-10-6. Plaintiffs admit they do not challenge that regulatory framework, Aplt. Br. at 44 & n.18, except for a single performance standard in section 40-10-17(2)(a), which states:

> (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 § 40-10-17(2)(a).

Sections 40-6-1 and 40-6-13. Plaintiffs' final statutory challenges are to oil and gas statutes. Plaintiffs challenge section 40-6-1, which declares that it is

> 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; [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 . . . .

Id. § 40-6-1.

Plaintiffs' complaint omits the "prevent waste" language. R. 35; Aplt. Br. at 42. The definition of "waste" is, among other meanings, "the inefficient, excessive, or improper use or the unnecessary dissipation of oil or gas." Utah Code § 40-6-2(30)(a).

The final statute Plaintiffs challenge is a rule of construction:

> 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 . . . .

Id. § 40-6-13.

Like the coal statutes, sections 40-6-1 and -13 are part of a larger chapter authorizing BOGM and DOGM to make rules, issue permits, authorize pooling agreements between property owners, and otherwise regulate oil and gas. *See, e.g., id.* §§ 40-6-5 to -9.5. Plaintiffs do not challenge those provisions.

II. The alleged "pattern and practice" of conduct

Plaintiffs also complain that Defendants have engaged and are engaging in a "pattern and practice" of conduct that is unconstitutionally "maximizing, promoting, and systematically authorizing the development of fossil fuels." R. 36.

Rather than identify specific actions, Plaintiffs list broad categories of past and ongoing general government functions that are allegedly being used to "maximize and promote the development of fossil fuels," including:

- The "Governor, and his predecessors have developed," and the Governor continues to develop "energy and mineral development goals and objectives, and comprehensive plans"
- OED has developed and continues to develop "energy plans for the State"
- OED has promoted and still "promotes energy and mineral development workforce initiatives"
- OED has supported and still "supports research initiatives"
- OED has sought and "seeks funding for, participates in federal programs to advance, and administers federally funded state fossil fuel energy programs"

- The "Energy Advisor coordinates across state agencies and coordinates energy-related regulatory processes"
- The "Energy Advisor advocates before federal and local authorities for energy-related infrastructure projects"
- The "State of Utah brings and OED works to support legal challenges to regulatory programs and initiatives that would reduce fossil fuels"

R. 36-38.

Plaintiffs also complain that 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, and that all fossil fuels in Utah are extracted under those permits. R. 38-40. Plaintiffs do not identify or challenge any specific permits. R. 38.

Plaintiffs' final complaint about unconstitutional conduct is that the executive branch hasn't acted. They allege the unconstitutional pattern and practice of conduct includes the State Energy Advisor's failure to propose "any actions or updates" to the State's energy policy that would "reduce the development of fossil fuels." R. 37-38.

III. The requested relief

Plaintiffs are not seeking damages or injunctive relief. They only request a judicial declaration that the challenged statutes and pattern of conduct violate the Plaintiffs' alleged "right to life" and their "right to be free from government conduct that substantially endangers their health and safety" under article I, sections 1 and 7. R. 91-92.

They also ask the Court to "declare that the 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 those constitutional rights. R. 93.

IV. The dismissal of the complaint

Defendants moved to dismiss under rules 12(b)(1) and 12(b)(6) for three reasons: (1) Plaintiffs' claims raised nonjusticiable political questions; (2) Plaintiffs lacked standing because the "requested equitable relief cannot effectively redress their alleged harms"; and (3) Plaintiffs had not pled a substantive due process violation. R. 149.

The district court granted the motion. R. 409. It held the complaint raised non-justiciable political questions that were best left to the legislature because there were no "judicially discoverable and manageable standards" to resolve Plaintiffs' claims. R. 412-414.

The court next held that Plaintiffs' claims weren't redressable because Plaintiffs failed to show "their proposed declaration[s] will have any effect on carbon emissions in Utah." R. 414. The court noted that Plaintiffs' complaint targeted statutory policy statements "without addressing the operative language," and it was "impossible to predict how courts might interpret" that language. R. 415. The court found Plaintiffs admitted that even if they

prevailed, Defendants' "authority to require permits for and regulate fossil fuel development would remain intact'" and Defendants would not have to adopt any "specific policy" or "remedial plan." R. 415 (quoting opposition to motion to dismiss).

Finally, the court ruled Plaintiffs could not prevail on their substantive due process claims. It held Plaintiffs "new policy proposal to cease or significantly curtail fossil fuel development" was not "deeply rooted in this Nation's history and tradition" or "implicit in the concept of ordered liberty." R. 416 (quoting *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)). In fact, Plaintiffs "admitted that fossil fuel development in Utah is 'historic and ongoing.'" R. 417. The court also found that private actors are polluting the air, and the "Due Process Clause does not require the State to protect against private actors." R. 417.

The district court dismissed the complaint with prejudice. R. 418. Plaintiffs appealed.

Summary of Argument

This Court should affirm because Plaintiffs' complaint is not justiciable and fails to plead a claim for which relief can be granted.

1. This Court can affirm the district court's dismissal because it lacks subject matter jurisdiction. Plaintiffs have not pled a ripe controversy and cannot show that declaratory relief will redress their injuries.

Declaratory judgment actions must be ripe. They must allege a concrete controversy, not an academic dispute. Plaintiffs have not alleged a concrete dispute. They instead challenge five statutes without pleading any facts alleging whether or how those statutes are being enforced. Plaintiffs also don't challenge any specific executive policy, initiative, decision, or permit. Defendants did not raise ripeness below, but it is a question of subject matter jurisdiction that can be raised at any time, and this Court can affirm on any grounds apparent in the record.

Plaintiffs also cannot show a declaration will redress their injuries. Plaintiffs lack standing unless a favorable decision is substantially likely to redress their injuries. They cannot satisfy that standard. At most, they can speculate that a declaration striking the statutes would impact the application of the remaining regulatory provisions or lead to the adoption of affirmative provisions requiring third-party enterprises to reduce fossil fuel production. The declaratory judgment Plaintiffs want about Defendants' conduct also cannot redress any injuries. Plaintiffs have not identified any precise conduct that allegedly violates their rights. And a declaration about a "pattern and practice" of conduct that "maximizes, promotes or systematically authorizes" fossil fuels would not provide any specific relief or resolve any uncertainty about what Defendants can and cannot do.

As pled, Plaintiffs' complaint asks for an advisory opinion about the constitutionality of state conduct and policies in the abstract. Courts cannot grant that relief. Plaintiffs must instead raise their concerns with their elected representatives.

2. The complaint fails to state a claim for which relief can be granted.

Plaintiffs allege a violation of their fundamental rights under the Utah Constitution's Due Process and Inalienable Rights Clauses. Plaintiffs must identify a specifically defined right that is deeply rooted in Utah's history and tradition. Plaintiffs have not done that, instead alleging expansive rights to life and to be free from government policies that endanger their health. Courts have not recognized those broad fundamental rights. Plaintiffs also cannot show they have a fundamental right to be free from fossil fuel emissions. The challenged policies and conduct are thus subject to rational basis review, and they easily survive that scrutiny.

Argument

This Court should affirm. First, the Court lacks subject matter jurisdiction over the complaint because the claims are unripe and Plaintiffs' injuries cannot be redressed by a declaratory judgment.[5] Second, Plaintiffs

[5] The district court also dismissed the complaint under the political question doctrine. R. 411-14. While this Court can affirm on that basis, *Dipoma v. McPhie*, 2001 UT 61, ¶ 18, 29 P.3d 1225, ripeness and redressability lay a clearer path to resolve this matter. The district court's political question

have not pled a violation of a specific fundamental right, so they cannot prevail on their constitutional claims.

I. The Court correctly dismissed Plaintiffs' claims because there is no subject matter jurisdiction.

The Declaratory Judgment Act authorizes courts to "issue declaratory judgments determining rights, status and other legal relations." Utah Code § 78B-6-401(1). The purpose of such a judgment is "to settle and to afford relief from uncertainty and insecurity" concerning those rights. *Id.* § 78B-6-412. That said, the Act "does not authorize [courts] to issue mere advisory opinions or judgments regarding non-justiciable controversies." *Miller v. Weaver*, 2003 UT 12, ¶ 6, 66 P.3d 592.

There are four "threshold elements" that a plaintiff must prove to maintain a declaratory judgment action: (1) there must be "a justiciable controversy;" (2) parties must have adverse interests; (3) the plaintiff must have a "legally protectible interest;" and (4) the issues must be "ripe for determination." *Miller,* 2003 UT 12, ¶ 15; *Utah Safe to Learn-Safe to Worship Coal., Inc.*, 2004 UT 32, ¶¶ 19-21, 94 P.3d 217.

Several of those requirements overlap with the standing test. *Jenkins v. Swan*, 675 P.2d 1145, 1148 (Utah 1983). "[S]tanding is a jurisdictional

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ruling raises justiciability concerns that are relevant to those issues and will be addressed with them.

requirement" that must be met for a court to hear a dispute. *Laws v. Grayeyes*, 2021 UT 59, ¶ 27, 498 P.3d 410 (internal quotation marks omitted). Plaintiffs must show (1) they have been or will be injured, (2) the defendants caused the injury, and (3) it is substantially likely that the requested relief will redress the injury. *See S. Utah Wilderness All. v. Kane Cnty. Comm'n* (*SUWA*), 2021 UT 7, ¶ 23, 484 P.3d 1146.

This Court can affirm the district court's dismissal of the complaint because there is no subject matter jurisdiction. To begin, Plaintiffs' claims are not ripe. Though Defendants did not raise ripeness below, this Court can affirm on that alternative ground because it is apparent in the record, *First Equity,* 2002 UT 56, ¶ 11, and because ripeness is a matter of subject matter jurisdiction that can be raised at any time, *Granite Sch. Dist.*, 2023 UT 21, ¶ 27; *In re E.Z.*, 2011 UT 38, ¶ 25. This Court can also affirm because a declaratory judgment will not redress Plaintiffs' alleged injuries so their claims are not justiciable.

A. Plaintiffs' claims for declaratory relief are not ripe.

Issues are ripe when there is "an actual controversy," or there is "a substantial likelihood that one will develop so that adjudication will serve a useful purpose in resolving or avoiding controversy or possible litigation." *Salt Lake Cnty.*, 2020 UT 27, ¶ 19. Put differently, courts should resolve

"legal issues only where the legal determination can be applied to the facts attendant to a specific controversy." *Id.* ¶¶ 19-20.

Ripeness standards are not relaxed because a plaintiff requests declaratory relief. *Salt Lake Cnty.*, 2020 UT 27, ¶¶ 38-39; *Baird v. State*, 574 P.2d 713, 715 (Utah 1978). No matter the context, ripeness requirements ensure that courts decide only disputes that have "matured to a point that warrants a decision" because "premature litigation will lead to ill-advised adjudication." *Salt Lake Cnty.,* 2020 UT 27, ¶¶ 17-18 & n. 14. The ripeness doctrine is thus closely intertwined with the rule against issuing advisory opinions. *Id.*¶ 18 & n.13. Ripeness prevents courts from becoming "forum[s] for hearing academic contentions and rendering advisory opinions" on abstract or hypothetical questions. *Baird*, 574 P.2d at 715; *see also Salt Lake Cnty.*, 2020 UT 27, ¶¶ 37, 39.

Plaintiffs' complaint does not state a ripe dispute. Plaintiffs have not alleged any facts about the application of the challenged statutes, nor have they pled any concrete facts identifying unconstitutional conduct.

1. Plaintiffs have not pled a specific controversy related to the challenged statutes.

None of Plaintiffs' statutory challenges are ripe. Ripeness prevents "the court from intruding on legislative functions by unnecessarily ruling on sensitive constitutional questions." *Salt Lake Cnty.*, 2020 UT 27, ¶ 18. A

statutory challenge "is unripe unless the court's legal determination" about the statute "can be applied to specific facts" of a case." *Id.* ¶ 20. A challenge thus must allege specific, and not hypothetical, facts about when the statute has been or will imminently be applied. *Id.* ¶¶ 21-22, 38. That is true even if the Court has "no[] doubt" that actual factual circumstances "will arise at some future time." *Id.* ¶ 20 (internal quotation marks omitted). Without concrete facts, the statutory challenge raises an abstract question and requests an advisory opinion. *Id.* ¶¶ 38-39.

For instance, this Court held a county had not raised a ripe challenge to a statute that blocked the county's ability to challenge tax assessments because the county failed to either allege it was "actually barred from" challenging an assessment or "identify an assessment [it] would have challenged." *Id.* ¶ 23.[6] By comparison, this Court has held statutory challenges were ripe when they presented specific factual circumstances "in which the resolved legal questions could be applied." *Id.* ¶ 41 & n.54; *see, e.g.,*

[6] *See also Salt Lake Cnty. v. Bangerter*, 928 P.2d 384, 385-86 (Utah 1996) (affirming dismissal because plaintiffs did not allege a taxpayer had "actually received a reduction of his property taxes" under the challenged statute); *Baird v. State*, 574 P.2d 713, 716 (Utah 1978) (holding complaint was unripe because it did not indicate how plaintiff would "be affected by [the statute's] operation" or "subject to its terms"); *cf. Boyle v. Nat'l Union Fire Ins. Co.*, 866 P.2d 595, 598 (Utah Ct. App. 1993) (declaratory action about meaning of insurance policies was unripe where court could only speculate about underlying facts).

Nebeker v. Utah State Tax Comm'n, 2001 UT 74, ¶¶ 1, 3, 34 P.3d 180 (challenging constitutionality of 12% interest imposed by statute after Tax Commission imposed that rate).

Here, Plaintiffs allege that all five statutes are facially unconstitutional. But they have not alleged any specific facts about how, when, or if those statutes are being applied. Plaintiffs complain about the rule of construction in section 40-6-13, R. 35, but they have made no factual allegations that the rule is being used or even has ever been used to interpret the oil and gas statutes. Plaintiffs also allege that section 40-10-17(2)(a) unconstitutionally requires DOGM to impose certain performance standards when it issues a permit. But they have not identified any specific permit when that standard was imposed to enable a court to judge the statute's constitutionality against a specific set of facts.

The remaining statutes are policy statements. A "policy section" of a statute is "not a substantive part of the statute" and thus "do[es] not create rights that are not found within the statute" or "limit those [rights] actually given by the legislation." *Price Dev. Co., L.P. v. Orem City*, 2000 UT 26, ¶ 23, 995 P.2d 1237 (citing Norman J. Singer, Sutherland Statutory Construction §§ 20.03, 20.12 (5th ed.1993)). Unless a plaintiff shows that a statute has an operative provision that gives effect to the statute's policy section, courts treat that section "as a non-binding statement of legislative preference."

Price, 2000 UT 26, ¶ 24. While statutory policies "may be used to clarify ambiguities" or "provide guidance to the reader as to how the act should be enforced and interpreted," *id.*, they do "not rewrite subsequent sections" of a statute, *J.P. Furlong Co. v. Bd. of Oil, Gas & Mining*, 2018 UT 22, ¶ 37 & n.12, 424 P.3d 858.

In any case, Plaintiffs' challenges to the policy statutes are unripe. Plaintiffs have pled no instance when these statutes were applied either on their own or with an operative provision. Nor have Plaintiffs alleged what operative provisions those policies might be used to interpret. And Plaintiffs have not challenged these statues as they were applied during any specific permitting actions, which is when parties allegedly suffering environmental harm often raise their claims. *Cf. Utah Chapter of the Sierra Club v. Bd. of Oil, Gas, and Min.*, 2012 UT 73, 289 P.3d 558 (discussing Sierra Club's challenge to permit application).

Though Plaintiffs have pled no specific facts showing how the challenged statutes have been enforced, they want the court to declare them "so constitutionally flawed that no set of circumstances exists under which the [statutes] would be valid." *Gillmor v. Summit Cnty.*, 2010 UT 69, ¶ 27, 246 P.3d 102. But how can a court determine there are no circumstances when a statute can be applied constitutionally when it does not have any specific circumstances before it? Without those allegations, Plaintiffs'

statutory challenges raise only academic and abstract questions. Plaintiffs are thus not situated any differently than the county was when it challenged the tax assessment statute divorced from its application. Here too, the Court should dismiss Plaintiffs' statutory challenges.

2. Plaintiffs' conduct allegations lack any specific facts.

Plaintiffs' allegations about Defendants' "pattern and practice of affirmative actions" also do not raise a ripe controversy. Plaintiffs' allegations rest on general descriptions about past and continuing patterns of conduct. So broad are those allegations that they fail to plead a concrete dispute. For example, Plaintiffs complain about DOGM's "ongoing pattern and practice of regulating and systematically authorizing permits for the development of fossil fuels" and its "historic and systematic authorization of fossil fuel development." R. 38-39. But Plaintiffs have not challenged a specific permit or DOGM decision. There is thus no factual context or controversy for the Court to resolve. Plaintiffs are essentially asking for the Court to decide whether it is unconstitutional for the State to continue to grant fossil-fuel-related permits in the abstract.

Plaintiffs' other allegations are similarly flawed. Plaintiffs complain about the governor's "energy and mineral development goals and objectives" that promote fossil fuels without identifying any of those goals and objectives. R. 37. They complain about OED's "energy plans," "workforce initiatives,"

"research initiatives," and funding requests without specifying what exactly they think is unconstitutional. R. 37. They complain that OED "participates in" and "administers" federal programs to advance fossil fuels and the Energy Advisor coordinates "energy-related regulatory processes" without naming those programs or processes. R. 37. And they complain that the State and OED "support legal challenges" but don't identify which ones.[7] R. 38.

While the complaint contains many allegations about the effects of pollution or climate change, there are no factual allegations about specific actions Defendants are taking. Without those allegations, Plaintiffs have not alleged a concrete dispute to which a judicial determination could be applied. They instead ask for a sweeping declaration that the executive branch's policies, initiatives, plans, and legal strategies are unconstitutional in the abstract. That is not a justiciable claim. It is a request for an advisory opinion.

Despite that, Plaintiffs argue dismissal was wrong because those details can be fleshed out during litigation. Aplt. Br. at 38, 43. They want to use discovery as a fishing expedition. That is not how pleading or ripeness

[7] Plaintiffs also complain the Energy Advisor hasn't recommended statutory changes to reduce fossil fuel development. R. 37-38. A declaration about that inaction would violate separation of powers by instructing the executive branch how to resolve difficult policy issues. *Cf. Carter v. Lehi City*, 2012 UT 2, ¶ 50, 269 P.3d 141 (judicial power is focused on interpreting policy decisions, "not on making those decisions in the first place").

works. Utah's pleading rules are liberally construed, but a complaint must still allege facts that provide fair notice of the nature of the claim, even if the plaintiffs fail to properly articulate the cause of action. Utah R. Civ. P. 8(a); *Mack v. Utah State Dep't of Com.*, *Div. of Sec.*, 2009 UT 47, ¶ 17, 221 P.3d 194. So too, a challenge is unripe "unless the court's legal determination . . . can be applied to specific facts," even if there is "no doubt" those factual circumstances will arise. *Salt Lake Cnty.*, 2020 UT 27, ¶ 20. Plaintiffs' vague allegations about unnamed policies, initiatives, and other conduct don't give Defendants fair notice about what specific conduct is disputed or allege any actual facts that could be proved to support the claim. Nor do they pass the ripeness threshold by showing the court could apply a decision to a specific set of facts. Plaintiffs' complaint merely alleges a possibility they might find some facts to support their claims. That should not be enough to allege a ripe controversy.

B. Plaintiffs' claims are not redressable.

The Court can also affirm because the declaratory judgment Plaintiffs want will not redress their injuries. To have standing, Plaintiffs must show it is "substantially likely," and not merely speculative, that the requested relief will redress the claimed injury. *See Jenkins*, 675 P.2d at 1148; *S. Utah Wilderness All. v. Kane Cnty. Comm'n* (*SUWA*), 2021 UT 7, ¶ 23, 484 P.3d 1146; *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). The district

court correctly held that Plaintiffs' statutory challenges were not redressable because it is not substantially likely a declaration will affect fossil fuel emissions. R. 414. Even though the district court did not specifically mention the conduct allegations in its redressability ruling, its dismissal of those claims can be upheld for the same reason. *First Equity,* 2002 UT 56, ¶ 11.

1. A judgment declaring the statutes unconstitutional would not redress Plaintiffs' injuries.

This Court should affirm the district court's dismissal of the statutory challenges because a declaratory judgment is unlikely to redress Plaintiffs' alleged injuries. Most of Plaintiffs' challenges are to policy statements that do not impose any affirmative requirements on Defendants. Plaintiffs thus cannot show it is substantially likely that declaratory relief striking those statues will change how Utah regulates natural resources. So too, Plaintiffs can only speculate that striking the performance standard or rule of construction would lead to the imposition of reduced use requirements or change the behavior of the third parties who are developing the fossil fuels.

a. Striking policy statutes will not change the statutory regulation of fossil fuels.

The Court can affirm the dismissal of Plaintiffs' challenges to sections 79-6-301(1)(b)(i), 40-10-1(1), and 40-6-1 because they are all policy statements. *See* Utah Code §§ 79-6-301(1)(b)(i) (stating "policy" that "Utah shall promote the development of (i) nonrenewable energy resources"); 40-10-

1(1) (stating legislative finding that it is "essential to the national interest to insure the existence of . . . an underground coal mining industry"); 40-6-1 (declaring "public interest to . . . promote the development, production, and utilization of . . . oil and gas").

The district court correctly held a declaration striking those statutes is not substantially likely to redress Plaintiffs' alleged injuries. R. 414. None of those provisions contain language that requires any defendant to take—or not take—any specific action. Those statutes are instead "non-binding statement[s] of legislative preference" that neither create rights nor limit rights created by the operative statutes. *Price*, 2000 UT 26, ¶ 24; *see supra* at 18-19.

For example, without the challenged policy provisions, the operative statutory provisions that govern permitting and regulation of oil, gas and coal will remain unchanged and will continue to govern just as they do now. *See, e.g.,* Utah Code §§ 40-6-2 to -24 (regulating oil, gas, and mining); *id.* §§ 40-10-2 to -30 (regulating coal mining). Plaintiffs even admitted that Defendants' authority to require permits for and [to] regulate fossil fuel development would remain intact" if the court declared the policy provisions unconstitutional. R. 415; *see also* Aplt. Br. at 44 & n.18. BOGM and DOGM will still only be able to act as authorized by those operative provisions.

Still, Plaintiffs argue the challenged policies are "statutory directive[s]" that bind the Defendants. Aplt. Br. 42. The case they cite, *Bennion v. ANR Production Company*, 819 P.2d 343, 346-47 (Utah 1991), does not support that argument. *Bennion* only used the phrase "statutory directive" when quoting the plaintiff's argument. *Bennion*, 819 P.2d at 346. The Court never said that it agreed with that characterization. Consistent with *Price's* reasoning, *Bennion* used section 40-6-1 as guidance for interpreting correlative rights under another statute (sections 40-6-2 and -6). *Id.* at 346-47.

At most, *Bennion* shows that policy statements "might, in some circumstances, influence" the interpretation of the operative provisions. *J.P. Furlong*, 2018 UT 22, ¶ 37 n.12. But they still cannot "rewrite" them. *Id.* Because Plaintiffs have not pled any actual instances when those policy statutes are being used with operative provisions, the Court can only speculate what operative statutes might be interpreted or whether they would be interpreted to authorize fossil fuel production beyond what the unchallenged provisions already allow.

Although Plaintiffs can only speculate about what would happen in the absence of the challenged statutes, they assert a declaration would redress their injuries because they have alleged Defendants are "implementing the mandates of the challenged provisions" through their "maximization,

promotion, and systematic authorization of fossil fuel development." Aplt. Br. at 40-41. But Plaintiffs admit that the "pattern and practice" of generalized conduct they complain about existed "prior to" the adoption of the challenged statutes, R. 36-39, thus conceding there is no link between the statutes and the conduct. Plaintiffs also have not shown that the governor and executive branch could not engage in whatever policies, initiatives and research, or legal strategies Plaintiffs dislike if the challenged policies didn't exist. R. 37-38. So even under a partial redressability standard, they can only speculate that a declaration about the policy statutes would reduce fossil fuel development or improve the air quality.

Plaintiffs thus cannot show it is substantially likely that a declaration about these policy statements will change the State's regulation of coal, oil, and gas, let alone reduce the development of fossil fuels by third parties. For that reason, a declaration would amount to "an advisory opinion without the possibility of any judicial relief." *California v. Texas*, 593 U.S. 659, 141 S. Ct. 2104, 2116 (2021) (holding declaration about constitutionality of unenforceable statute could not redress injuries and would threaten "to grant unelected judges a general authority to conduct oversight of decisions of the elected branches of Government").

b. Plaintiffs can only speculate that striking the rule of construction or performance standard will redress their injuries.

A declaration about the remaining two statutes—sections 40-6-13 and 40-10-17(2)(a)—is also not substantially likely to redress Plaintiffs' injuries. Here too, Plaintiffs can only speculate that striking those statutes will affect the State's regulatory framework or reduce the production of fossil fuels.

Plaintiffs cannot show that striking section 40-6-13 will reduce fossil fuel production or air pollution emissions. That section contains only a rule of construction that the Oil and Gas 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 a pool or well "to an amount less than the well or pool can produce" unless required to prevent waste or protect correlative rights. Utah Code § 40-6-13.

Like the challenged policy provisions, the rule of construction does not determine who gets to drill for oil or what regulatory criteria DOGM and BOGM use to grant new permits or regulate existing wells. Those requirements are found in other statutes. *See, e.g., id.* §§ 40-6-5 to -8, -9.5. For section 40-6-13 to have any effect at all, it must be used in conjunction with another provision. Plaintiffs have not alleged—and thus cannot show beyond speculation—that any provision would be interpreted differently if the rule of construction did not exist.

Besides that, Plaintiffs cannot show that it is substantially likely that BOGM or DOGM would do anything differently without the rule of construction or even, for that matter, without the policy provision in 40-6-1. Plaintiffs cannot, for example, show that BOGM would propose regulations to require production of less than the full amount a well can produce but for those provisions. Nor can Plaintiffs show that BOGM and DOGM would ever order—or even have statutory authority to order—a developer to produce less than the maximum a well could produce, except as may already be allowed to prevent waste[8] or protect correlative rights[9] under existing law. *See, e.g.,* Utah Code §§ 40-6-2(2), (30); 40-6-3; 40-6-6(6)(b); 40-6-6.5; 40-6-7; 40-6-8(3); 40-6-11(3). And Plaintiffs can only speculate that third parties would choose to obtain less than the greatest "ultimate recovery" or "possible economic recovery" from the resource in the absence of such a requirement.

Plaintiffs' redressability allegations about the coal performance standard in section 40-10-17(2)(a) are similarly flawed. That section requires that surface mining coal permits shall impose certain performance standards,

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[8] Waste is a defined term. It means, among other definitions, "the inefficient, excessive, or improper use . . . of oil or gas" or the "operating . .. of any oil or gas well in a manner that causes a reduction in the quantity of oil or gas ultimately recoverable from a reservoir under prudent and economical operations." Utah Code § 40-6-2(30)(a), (c)(i).

[9] "Correlative rights" mean "the opportunity of each owner in a pool to produce the owner's just and equitable share of the oil and gas in the pool without waste." Utah Code § 40-6-2(2).

including "maximiz[ing] the utilization and conservation" of the resource "so that reaffecting the land in the future through surface coal mining can be minimized." *Id.* § 40-10-17(2)(a). Plaintiffs do not allege that Defendants can't ever make maximizing the use and conservation of fuel resource a condition of a permit. Their grievance instead seems to be that the statute always imposes that requirement. Aplt. Br. 44 & n.18.

Even so, Plaintiffs cannot show that striking that standard is likely to make a difference. The coal statutes do not require DOGM to issue permits conditioned upon an operation's production of less than the maximum amount of a resource. And the courts cannot compel the legislature to pass a statute authorizing or requiring DOGM to impose those performance requirements. *Cf. Baker v. Carlson*, 2018 UT 59, ¶ 13, 437 P.3d 333 ("[L]egislative power . . . involves the promulgation of laws of general applicability"); *see also Juliana v. United States*, 947 F.3d 1159, 1171-72 (9th Cir. 2020) (holding court cannot order government to develop a plan to reduce fossil fuels); *Aji P. v. Washington*, 480 P.3d 438, 447 (Wash Ct. App. 2021) (same). So at most, striking the performance standard would mean that permits will be silent about whether the use and conservation of the resource must be maximized. It would be entirely in the discretion of the third-party coal mines to decide whether they would operate in a way that doesn't

"maximize the utilization and conservation of the" coal. And Plaintiffs can only speculate that those commercial operations would choose to produce less.

2. Because the Court cannot redress injuries by declaring undefined conduct unconstitutional, Plaintiffs' claims are not justiciable.

Plaintiffs also ask for a judicial declaration 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 their constitutional rights. R. 93. The Complaint does not allege any specific "affirmative actions" that make up that "pattern and practice," instead relying on broad categories of general government functions like issuing permits, implementing policies, supporting research and workforce initiatives, and seeking federal funding. R. 37-38; *see supra* at 8-10, 20-21. Those allegations amount to no more than a request for an all-encompassing declaration that Defendants have unconstitutional practices, with the hopes that it will make them stop those practices, whatever they are.

A declaratory judgment cannot redress such general grievances. A justiciable declaratory relief controversy is one where "the judgment, when pronounced . . . would give specific relief." *Miller*, 2003 UT 12, ¶ 15. Courts may refuse declaratory relief when a judgment, if entered, "would not

terminate the uncertainty or controversy giving rise to the proceeding." Utah Code § 78B-6-404; *see also Miller*, 2003 UT 12, ¶ 27.

What's more, "[p]recise resolution, not general admonition, is the function of declaratory relief." *United States v. Washington*, 759 F.2d 1353, 1357 (9th Cir. 1985). A declaration that announces legal rules that are "imprecise in definition and uncertain in dimension" fails that function. *Id.* In *Washington*, for example, the court refused to issue a declaratory judgment that the state violated a treaty by engaging in activities that caused "environmental degradation" of a habitat because there were "myriad State actions that may affect the environment" and the articulation of the state's "precise obligations and duties" would depend on "concrete facts . . . in a particular case." *Id.*; *see also id.* at 1361-62 (Ferguson, J., concurring) (questioning whether a declaration about "environmental degradation" would apply equally to hospital or school construction, issuing permits for residential development, or licensing logging operations).

Washington is not alone. The Alaska Supreme Court denied a claim for a judgment declaring, among other things, that the state had "exacerbated climate change in violation" of plaintiffs' rights to life or liberty. *Sagoonick v. State*, 503 P.3d 777, 791 (Alaska 2022). It held declaratory relief would not settle any uncertainty because it would not compel the state to take any particular action, tell the state how to "fulfill its constitutional obligations,"

or help plaintiffs know if their rights had been violated. *Id.* at 801; *see also Iowa Citizens for Cmty. Improvement v. State*, 962 N.W.2d 780, 792 (Iowa 2021) (dismissing action requesting declaratory judgment that state violated public trust doctrine by not protecting water because general declarations "do not provide any assurance of concrete results").

As in those cases, Plaintiffs' claim for declaratory relief will not resolve any uncertainty or specific controversy. For one, the declaration Plaintiffs want will not redress any injuries allegedly caused by past conduct or permits that have already been granted. *See Miller*, 2003 UT 12, ¶ 28 (holding declaratory judgment was not justiciable because declaratory judgment about "past conduct" would not prevent school board from continuing to spend public funds); *Jordan v. Sosa*, 654 F.3d 1012, 1025 (10th Cir. 2011) (stating plaintiff "must be seeking more than a retrospective opinion that he was wrongly harmed").

To the extent Plaintiffs request a declaration about allegedly ongoing conduct, that request is too expansive and, as the district court recognized, lacks any precise or manageable standard to guide the Court or the defendants. R. 414. Even if granted, a declaration that the State violates constitutional rights if it engages in a "pattern and practice" of activity that maximizes, promotes, or systematically authorizes the development of fossil fuels would give Defendants no guidance about what specific activities they

can continue or actions they can take in the future, nor would it give Plaintiffs a test to determine whether those actions violate their rights. The State's precise obligations would still depend on the concrete facts of disputes that are not before this Court.

For example, if Plaintiffs' request for declaratory relief were granted, would OED be engaging in a pattern and practice of promoting fossil fuels by sponsoring job training or a job fair to connect unemployed workers with mining jobs? Or is that an unconstitutional workforce initiative to promote fossil fuels? If DOGM granted an oil, gas, or coal permit, would that permit automatically be unconstitutional because it is part of a "pattern and practice" of maximizing, promoting, or systematically authorizing the development of fossil fuels? And to the extent the DOGM could continue to grant permits when, if ever, could DOGM impose requirements to maximize resource development even though there are a range of policy reasons—from global unrest to protecting citizens from energy insecurity caused by power grid failures to minimizing disruptions to the land—that might warrant such a requirement? *See Juliana,* 947 F.3d at 1172 (recognizing that "economic or defense considerations" may call for the "continuation of the very programs" the plaintiffs challenged).

Short of stopping every activity that might be considered fossil fuel promotion, development, or authorization, no state actor would have any

assurance whether it was acting constitutionally without going back to court.[10] That level of uncertainty would proliferate judicial intervention in state policy. Courts would constantly be asked to determine whether an action was part of the larger "pattern and practice" of conduct that promoted, maximized, or systematically authorized fossil fuels that had previously been declared unconstitutional.[11] And the State would, effectively, need to obtain Court approval for its permitting and other fossil fuels decisions.

Without defined and manageable standards, the Court would be wading into a political question about how to balance the need for affordable and reliable energy against environmental issues. Non-justiciable political questions involve:

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[10] Plaintiffs assert they are not requesting an injunction, Aplt. Br. at 34-35, but that would be the effect of the declaration they want. And courts have been unwilling to grant injunctive relief that would dictate how the elected branches solve climate change concerns. *See Juliana*, 947 F.3d at 1171-72; *Aji P.*, 480 P.3d at 447-450.

[11] Plaintiffs cite several cases to argue their "pattern and practice" allegations support their demand for declaratory relief. Aplt. Br. at 41. But those cases discuss whether the plaintiffs alleged a sufficient pattern or practice to determine whether a defendant has qualified immunity or is liable for damages. *See Haygood v. Younger*, 769 F.2d 1350, 1358 (9th Cir. 1985) (en banc) (considering whether defendants had immunity to inmate's claim they miscalculated his release date when the defendants argued they followed their department's policy); *Kuchinski v. Box Elder Cnty.*, 2019 UT 21, ¶ 32, 450 P.3d 1056 (discussing test for whether municipality committed flagrant violation of substantive due process to determine if damages were available). They do not suggest that courts can declare that collective swaths of undefined conduct are unconstitutional.

> a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government.

Matter of Childers-Gray, 2021 UT 13, ¶ 64, 487 P.3d 96 (quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962)). In short, the proposed declaration would turn the Court into the overseer of every state action touching fossil fuels across the spectrum of the State's energy policies. Those questions must be left to the executive and legislative branches to resolve.

3. The district court did not impose a heightened pleading standard.

Although Plaintiffs have pled no specific statutory applications or government actions, they argue the district court held them to a heightened pleading standard that required them to show that a favorable ruling would completely redress their injuries to a precise degree, fully solving Utah's air quality and climate crises. Aplt. Br. at 38-39. They argue that partial—or any minuscule amount of—redressability suffices. *Id.* That argument does not save their complaint.

Contrary to Plaintiffs' arguments, the district court applied the correct redressability standard. It held that the "relief requested must be

substantially likely to redress the injury claimed." R. 414 (quoting *SUWA,* 2021 UT 7, ¶ 23). Plaintiffs concede that is the standard by acknowledging they must show that an "adverse impact from government conduct would likely 'be relieved' if the 'government action is declared unconstitutional.'" Aplt. Br. at 39 (quoting *Jenkins*, 675 P.2d at 1153).

The district court held Plaintiffs' complaint failed to satisfy that standard because their own allegations did not show that a declaration would have "*any* effect on carbon emissions." R. 414 (emphasis added). That decision was correct, even under a partial redressability standard. That is because Utah's regulatory framework would continue to apply even without the challenged statutes, and there would still be no statutory mechanism to require Defendants to impose production restrictions except as already authorized by statute. *See, e.g.,* Utah Code § 40-6-3 (prohibiting waste of oil or gas). So Plaintiffs can only speculate that striking the challenged statutes would redress their injuries or even minimally reduce emissions. [12] *See supra*

[12] The district court stated, "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." R. 414. As Plaintiffs note, this appears to get the issue backwards because Plaintiffs are not challenging the statutes for allegedly reducing fossil fuel consumption. Aplt. Br. at 41. The district courts use of "reduce" was clearly a drafting error. Read in context, the district court appears to be saying that Plaintiffs had not offered any analysis showing how the policy provisions might be used to interpret the operative requirements in a way that would increase fossil fuel consumption.

at Arg. I(B)(1). And they cannot show a declaration about Defendants' alleged conduct has a more than speculative chance of redressing their injuries because they have not alleged any specific actions and concede Defendants' permitting authority will remain in place. *See supra* at Arg. I(B)(2).

Plaintiffs argue that they did not have to allege specific details because so long as they satisfy notice pleading the "specific facts that are necessary to support the claim" can be fleshed out in litigation. Aplt. Br. at 38 (citing *Brown v. Div. of Water Rts. of Dep't of Nat. Res.*, 2010 UT 14, 228 P.3d 747). But this case is not like the *Brown* or *Jenkins* cases Plaintiffs cite. In *Brown,* the plaintiffs challenged a permit authorizing their neighbor to alter a stream and build a bridge because those actions increased the chance of flooding on their properties. 2010 UT 14, ¶¶ 3-4. The Court held that plaintiffs had sufficiently pled a reasonable probability of future flooding even though weather patterns made flooding impossible to predict. *Id.* ¶¶ 6, 19-25. The allegation would thus be "assumed to 'embrace those specific facts necessary to support the claim,'" *id.* ¶ 21 (quoting *Lujan*, 504 U.S. at 561), including that flooding would occur and would damage plaintiffs' property, *id.* ¶ 24-25.

So too, in *Jenkins* the plaintiff alleged a specific municipal practice of "providing public property and public services to religious organizations" was unconstitutional. 675 P.2d at 1148. The Court held that claim could be redressed with declaratory relief because the plaintiff had alleged that

specific practice increased his tax burden, and stopping the practice would lower it. 675 P.2d at 1153.

The *Brown* and *Jenkins* plaintiffs alleged concrete actions that would cause their injuries: building a bridge or giving municipal property to religious organizations. Plaintiffs have not done that. They have only alleged a possibility that defendants are engaging in some broad yet-to-be-identified conduct or statutory applications that will harm them. And that "mere possibility" is not enough. *Cf. Brown*, 2010 UT 14, ¶ 19 (reiterating complaint must plead more than a "mere possibility" of future injury).

To the extent Plaintiffs believe a specific program, initiative, plan, research initiative, permit, or participation in litigation is unconstitutional, that is not the complaint they filed.[13] The current allegations that the government has unnamed policies and practices that, collectively, are violating Plaintiffs' rights are not the types of precise and concrete claims that declaratory relief can redress.

[13] Plaintiffs argue they would have amended their complaint if it had been deficient. Aplt. Br. at 48 n.20. They never moved to amend or filed an amended complaint. Defendants concede, however, that dismissal for ripeness or redressability should be without prejudice. *See Salt Lake Cnty.* 2020 UT 27, ¶ 27.

4. Other courts have recognized claims like Plaintiffs are not redressable.

Plaintiffs also argue that other courts have found that declaratory relief will redress their injuries. Aplt. Br. at 45-46 (citing cases). But absent an express state constitutional provision providing for a clean and healthy environment,[14] most courts have dismissed claims for declaratory relief, particularly when the declaration would not "provide any assurance of concrete results" and would "herald long term judicial involvement." *Iowa Citizens*, 962 N.W.2d at 792 (dismissing claim for declaration that state had duty to protect water); *see also Sagoonick*, 503 P.3d at 802 (dismissing claim for declaration that the state was exacerbating climate change because it would require the judiciary to sit as a "case-by-case" adjudicator about the state's compelling interests in resource development and require the courts to decide whether they "should ultimately order that the State deny all permit

[14] Two Plaintiffs' cases that allowed declaratory actions to proceed involved claims based on express constitutional rights to a "clean and healthful environment" that are not in Utah's Constitution. *See Held v. State of Montana*, Case No. CDV-2020-307, Montana First Judicial District Court, Lewis and Clark County (August 14, 2023), at 94-100; *N.F. v. Dep't of Transp.,* Case No. ICCV-22-0000631 (JPC), Ruling re Motion to Dismiss (April 6, 2023), at 2, 5. And the federal decision Plaintiffs cite was overruled by the Ninth Circuit. *See Juliana*, 947 F.3d at 1170, 1175 (holding district court should have dismissed complaint because plaintiffs could not show "elimination of the challenged programs would halt the growth of carbon dioxide levels in the atmosphere"); *but see Juliana v. United States*, Civ. No. 6:15-cv-011517-AA, 2023 WL 9023339, at *12-15 (D. Or. Dec. 29, 2023) (declining to dismiss amended complaint that alleged partial redressability).

applications for oil and gas drilling"); *Clean Air Council v. United States*, 362 F. Supp. 3d 237, 249-50 (E.D. Pa. 2019) (dismissing claim because it was too speculative that requested declaration would redress injuries); *Juliana*, 947 F.3d at 1170 ("A declaration . . . is unlikely by itself to remediate" plaintiffs' alleged injuries from climate change "absent further court action"); *Aji P.*, 480 P.3d at 451-52 (dismissing declaratory judgment claim that would not redress injuries "because the world must act collectively . . . to stabilize the climate").

This Court should follow those cases and hold that even if Plaintiffs' factual allegations are true, Plaintiffs cannot show that the relief they request is likely to redress their injuries at all.

5. Declaratory relief must be more than a general admonition.

Plaintiffs' final argument is that the district court's redressability ruling ignored precedent that they are entitled to assume that state officials will abide by a declaration and change their conduct. Aplt. Br. at 44-45. To be sure, state officials try to follow this Court's constitutional rulings. The problem is that the declaration Plaintiffs want won't tell Defendants what *specific actions* they might take.[15] A sweeping declaration about the

[15] The breadth of Plaintiffs' requested declaration distinguishes their complaint from the cases they cite to argue that they are entitled to presume a declaratory judgment will inspire the government to change. Those cases issued declarations about precise actions. Aplt. Br. 45; *see Utah v. Evans*, 536 U.S. 452, 463-64 (2002) (stating if court declared calculation method used to

challenged statutes or Defendants' "pattern and practice" of conduct will be an academic decision and inject uncertainty about what, if anything, the State can do to incorporate fossil fuels into its energy needs. *See supra* at 30-34. And even if Plaintiffs think that academic decision might inspire the defendants to make different policy decisions, that is not enough. Redressability requires that the court "afford relief through the exercise of its power, not through the persuasive or even awe-inspiring effect" of its opinions. *Nova Health Sys. v. Gandy*, 416 F.3d 1149, 1159 (10th Cir. 2005).

This Court should thus hold the complaint is not justiciable because it will not terminate any controversy or produce a judgment that will give "specific relief." *Miller*, 2003 UT 12, ¶¶ 15, 28. For decades, the legislature has grappled with the important policy questions on balancing the State's energy and environmental needs, which includes considering a complex federal regulatory regime. But those questions cannot be answered through sweeping judicial declarations. The unripe "generalized grievances" Plaintiffs

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create census report was unconstitutional, then it assumed the government would take steps to correct the ministerial actions that were triggered by the report's issuance); *Franklin v. Massachusetts*, 505 U.S. 788, 803 (1992) (assuming federal actors would abide by declaration about proper allocation of overseas federal employees to federal census counts); *Anatol Zukerman & Charles Krause Reporting, LLC v. U.S. Postal Serv.*, 64 F.4th 1354, 1358, 1367 (D.C. Cir. 2023) (declaring post-office unconstitutionally denied stamp design).

have alleged[16] are more "properly addressed to the legislature, a forum where freewheeling debate on broad issues of policy is in order." *Jenkins*, 675 P.2d at 1149.

II. Plaintiffs have not stated a claim for a violation of fundamental rights.

This Court can also affirm because Plaintiffs cannot prove the violation of a fundamental right. Plaintiffs allege that Defendants are infringing on their rights under the Inalienable Rights and the Due Process Clauses of the Utah Constitution. Both clauses use similar terms. Section 1 declares that "[a]ll persons have the inherent and inalienable right to enjoy and defend their lives and liberties" and to "acquire, possess and protect property." ." Utah Const. art. I, § 1. Section 7, in turn, limits the government's ability to interfere with those rights, declaring "[n]o person shall be deprived of life, liberty or property, without due process of law." Utah Const. art. I, § 7. Plaintiffs argue the terms "life" and "liberty" give them the fundamental right to life, Aplt. Br. at 54; R. 82-83, and to be free from substantial government endangerment of their health and safety, Aplt. Br. at 53, 56; R. 86-88.

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[16] Plaintiffs argue the dismissal violates the Open Courts Clause by denying them their day in court. Aplt. Br. at 20-21. But Plaintiffs are not entitled to bring a non-justiciable claim. *Miller v. USAA Cas. Ins. Co.*, 2002 UT 6, ¶ 38, 44 P.3d 663 ("Parties to a suit . . . are constitutionally entitled to litigate any *justiciable* controversy between them . . . ." (emphasis added)).

When a plaintiff asserts a violation of substantive due process, the Court must first determine whether the asserted right is fundamental. If it is, the court applies strict scrutiny to any government laws or actions that infringe upon it. If it is not, the court applies a rational basis test. *State v. Angilau*, 2011 UT 3, ¶ 10, 245 P.3d 745.

This Court should apply that same analysis to the claims under article I, section 1. The complaint pairs the allegations under both clauses together, R. 82-91, and Plaintiffs concede the clauses are related, Aplt. Br. 52-53; Utah Const. art. I, §§ 1, 7. Using the same test for both clauses also ensures that the terms "life" and "liberty" don't mean different things in each clause. And there is precedent for applying this rubric to other constitutional provisions. For instance, courts apply a fundamental rights analysis to claims under the Uniform Operation of Laws Clause. *See Gallivan v. Walker*, 2002 UT 89, ¶ 40, 54 P.3d 1069. As in those cases, limiting strict scrutiny review to fundamental rights ensures that the court does not cross legislative lanes. *Glucksberg*, 521 U.S. at 720.

Using the substantive due process test, Plaintiffs cannot prevail on their constitutional claims because their complaint does not plead the violation of any fundamental right. And without such a right, the laws and conduct easily survive rational basis review.

A. Plaintiffs have not pled a specific fundamental right.

The district court properly dismissed the complaint because Plaintiffs have not pled a fundamental right.[17] This Court approaches fundamental rights claims cautiously and requires a specific articulation of the right. Plaintiffs' articulation of broad rights to life and freedom from endangerment does not satisfy that standard. Despite Plaintiffs' general framing, what they are asserting is a right to be free from fossil fuel emissions, and that right is not deeply rooted in the concept of ordered liberty.

1. Courts cautiously approach claims of fundamental rights.

Parties asserting substantive due process violations have the burden to show that a right is fundamental. *In re Adoption of B.B.*, 2020 UT 52, ¶ 25,

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[17] The district court dismissed Plaintiffs' complaint because "[t]here is no precedent for extending the doctrine of substantive due process into policy decisions regarding the development of fossil fuels." R. 416. Plaintiffs argue that was wrong because it would protect entire areas of the law from constitutional challenges. Aplt. Br. at 49. But read in context, the court appeared to mean there was no precedent for extending fundamental rights. R. 416-418. That meaning is evidenced by the cases the court cited that denied due process claims because the challenged actions did not abridge fundamental rights. R. 416-417 (citing *E. Enterprises v. Apfel*, 524 U.S. 498, 517 (1998) and *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997)). The district court could have been more precise, but the decision is correct. *See infra* at 45-64.

Plaintiffs also argue Defendants never challenged whether Plaintiffs asserted fundamental rights. That's not true either. Defendants argued Plaintiffs could not show that curtailing fossil fuels was deeply rooted in the nation's history and tradition—i.e., that Plaintiffs had not asserted a fundamental right. R. 172.

469 P.3d 1083. To meet that burden, they must provide a "careful description" of the claimed right. *Glucksberg*, 521 U.S. at 721. They then must show that the asserted fundamental right is "deeply rooted in this Nation's history and tradition." *Id.*

The "catalog of fundamental interests is relatively small." *Tindley v. Salt Lake City Sch. Dist.*, 2005 UT 30, ¶ 29, 116 P.3d 295. They include the "right to marry, to have children, to direct the education and upbringing of one's children, to marital privacy, to use contraception . . . and to bodily integrity." *Seegmiller v. LaVerkin City*, 528 F.3d 762, 770-71 (10th Cir. 2008); *accord Glucksberg*, 521 U.S. at 720.

While there is room for new applications of fundamental rights, the "constitution is not a license for common-law policymaking." *B.B.*, 2020 UT 52, ¶ 24, 469 P.3d 1083; *see also In re Adoption of J.S.*, 2014 UT 51, ¶ 30, 358 P.3d 1009 ("[T]he Due Process Clause is not a license for the judicial fabrication of rights that judges might prefer, on reflection, to have been enshrined in the constitution."). Courts have thus "been reluctant" to expand those applications. *Glucksberg*, 521 U.S. at 2267. That is because there are few "guideposts for responsible decisionmaking" in those "unchartered area[s]." *Id.* And when a court declares a fundamental right it, "to a great extent, place[s] the matter outside the arena of public debate and legislative

action." *Id.* Fundamental rights are thus the "exception, not the rule." *J.S.*, 2014 UT 51, ¶ 30.

2. Plaintiffs have not pled their alleged fundamental rights with specificity.

When a plaintiff asserts fundamental rights that have not previously received constitutional protection from this Court, they must specifically define those rights. *B.B.*, 2020 UT 52, ¶ 25; *Kingston v. Kingston*, 2022 UT 43, ¶ 44, 532 P.3d 958. Plaintiffs "bear[] the burden of showing that the specific right and remedy [they] assert[] is guaranteed by the original public meaning of the Due Process Clause." *B.B.*, 2020 UT 52, ¶ 25. They cannot merely assert that broadly framed rights are "fundamental." *Id.*

This distinction is evident in parental rights cases. The Court has praised parental rights in sweeping terms, calling them "fundamental" and "the basis of our society." *In re J.P.*, 648 P.2d 1364, 1373 (Utah 1982); *B.B.*, 2020 UT 52, ¶ 25. Yet when deciding due process challenges raised by persons whose status has not already received constitutional protection, this Court limits the actual fundamental right with careful reference to the "status" and "conduct" of the person claiming the right. *K.T.B.*, 2020 UT 51, ¶ 70.[18] For example, in *B.B.*, a biological father's invocation of "parental rights"

[18] *Compare K.T.B.*, 2020 UT 51, ¶¶ 31-39 (finding mother possessed a fundamental right to parent child despite failure to comply with Adoption

failed to invalidate a statute. 2020 UT 52, ¶¶ 21-25. Though the Court acknowledged that few rights were as "precious" as parental rights, it held the plaintiff failed to show "the specific right and remedy he assert[ed]" was protected. *Id.* ¶¶ 24-25.[19]

Here, Plaintiffs have not invoked any precise or previously recognized fundamental right. They instead rely on general rights to life and to be free from government endangerment. Aplt. Br. at 54-55. They argue they don't have to be more specific because their rights are not limited by "the particular form of government interference." *Id.* at 50 (quoting *K.T.B.*, 2020 UT 51, ¶ 52). But the principle they cite applies when courts have already recognized the specific fundamental right at issue. *K.T.B.*, 2020 UT 51, ¶¶ 69-73. So in *K.T.B.*, the Court held that the alleged right did not have to be defined as a mother's right to retain her parental rights because this Court's "case law [had] already established the level of protection the Due Process

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Act) *with In re Adoption of B.Y.*, 2015 UT 67, ¶¶ 41-46, 356 P.3d 1215 (finding unwed fathers do not).

[19] *See also Jensen ex rel. Jensen v. Cunningham*, 2011 UT 17, ¶ 73, 250 P.3d 465 (finding a "more specific" "fundamental right to direct medical care" of the child); *Kingston*, 2022 UT 43, ¶ 44 (finding a narrowly defined parental right to "encourage [children] in the practice of religious belief"); *Jones v. Jones*, 2015 UT 84, ¶ 26, 359 P.3d 603 (finding "fundamental" the "parent's right to decide who has a right of visitation with her child"). *Cf. J.S.*, 2014 UT 51, ¶ 59 n.22 (rejecting "generic interest in parenthood"); *B.B.*, 2020 UT 52, ¶ 25 (rejecting broad claims of "parental rights").

Clause provides" to a biological mother in a parental rights termination case. *K.T.B.*, 2020 UT 51, ¶ 73. But *K.T.B.* reaffirmed that rights must be specifically defined when the right is claimed by someone whose status or conduct has not already received constitutional protection. *Id.* ¶ 70. The Court reiterated that specificity requirement two days later, when it rejected a father's parental rights argument because he did not show "the specific right and remedy he assert[ed]" was protected by the Due Process Clause. *B.B.*, 2020 UT 52, ¶ 25.

3. This Court has not recognized the sweeping fundamental rights Plaintiffs assert.

Here, Plaintiffs have not shown that the broad fundamental rights they assert have already received constitutional protection. To begin, the cases Plaintiffs cite do not establish a right to be free from any government policy that might reduce a lifespan. While several of those cases make aspirational statements about a right to life, none of them hold it is a fundamental right or define the contours of that right. They largely mention a right to life in dicta before proceeding to decide a different constitutional issue.[20]

[20] *See Munn v. Illinois*, 94 U.S. 113, 142 (1876) (opining about right to "life" in case about whether price regulation violated property rights); *State v. Phillips*, 540 P.2d 936, 940 (Utah 1975), *disavowed on other grounds, State v. Taylor*, 664 P.2d 439 (Utah 1983) (rejecting free speech challenge to pornography statute and noting that liberties, including "the most fundamental, the right to life," must sometimes yield); *McGrew v. Industrial Comm'n*, 85 P.2d 608, 610 (Utah 1938) (addressing whether minimum wage

Plaintiffs' cases also don't recognize a broad right to be free from substantial endangerment. *Malan v. Lewis* addressed whether a statute violated the Open Court's Clause's guarantee that a person has a "remedy by due course of law" for "an injury done to him in his person." 693 P.2d 661, 674-75 & n.17 (Utah 1984); Aplt. Br. at 61. That case may recognize the right to bring a civil suit to recover for an injury, but it did not establish a fundamental right to government protection of life and health. Plaintiffs' other cited cases are similarly distinguishable. Aplt. Br. at 61-62. They found rights to be free from specific harms in specific circumstances, such as when individuals are in involuntary state custody or have some other special relationship with the government.[21] They did not recognize the sweeping right Plaintiffs assert here.

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law offended right to property or to contract); *Jensen*, 2011 UT 17, ¶¶ 72-78 (holding parents have the right to direct the medical care of their children, but that right must be balanced against state's interest in protecting children from harm); *Ray v. Wal-Mart Stores, Inc.*, 2015 UT 83, ¶¶ 21-28, 74, 359 P.3d 614 (citing ." article I, section 1 as evidence of public policy favoring a right to self-defense that limits private employer's ability to terminate employee).

[21] *See Rochin v. California*, 342 U.S. 165, 173 (1952) (holding state violates due process when it obtains conviction by forcibly pumping suspect's stomach); *Ingraham v. Wright*, 430 U.S. 651, 672-74, 683 (1977) (holding corporal punishment in public school did not violate right to be free from "bodily restraint and punishment" because there were sufficient procedural constraints); *Youngberg v. Romeo*, 457 U.S. 307, 315 (1982) (holding individual involuntarily committed to state mental health facility had a right to personal safety); *Washington v. Harper*, 494 U.S. 210, 227 (1990) (recognizing inmate had right to appropriate medical treatment and to refuse

Recognizing the limitation of those holdings, Plaintiffs argue they are in the same position as those in state custody because they have days when they must "remain indoors," presumably including in their own homes. Aplt. Br. at 62. That is nothing like the situation of an inmate who has lost their liberty because they are confined to a state institution by order of law. Nor is there any precedent for expanding the State's constitutional duties to individuals in custody to the entire population who still have their full freedoms. To the contrary, without some special relationship, the federal constitution does not "guarantee . . . certain minimal levels of safety and security." *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 195 (1989); *see also Gray v. Univ. of Colo. Hosp. Auth.*, 672 F.3d 909, 924 ("[T]he restraint of liberty necessary to invoke substantive due process protection under the special relationship exception requires state action involving force, the threat of force, or a show of authority, with the intent of exercising and control over the person.").

Plaintiffs also argue they have constitutional rights to life, health, and safety because Utah courts have recognized that other fundamental rights,

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forced administration of anti-psychotic drugs unless inmate was dangerous and treatment was in his medical interest); *Wickham v. Fisher*, 629 P.2d 896, 901 (Utah 1981) (addressing pre-trial detainee's complaints that jail's overcrowded conditions violated "detainee's right . . . to be free from unduly harsh and rigorous treatment").

like parental rights, must yield when the State has a compelling interest in protecting the health and safety of children. Aplt. Br. at 63. But the State's efforts to protect children in certain dangerous circumstances do not give those children broad fundamental rights to health and safety, let alone to be free from fossil fuel emissions. The Constitution gives the legislature power to legislate "upon any subject as to which there is no constitutional restraint, or as to which the paramount law does not speak." *State ex rel. Nichols v. Cherry*, 60 P. 1103, 1103 (Utah 1900); *see also State v. Mason*, 78 P.2d 920, 925 (Utah 1938) ("The Legislature has every power which has not been fully granted to the Federal Government or which is not prohibited by the State Constitution."). The State may thus act to protect children, or any number of other state interests. It does not create new fundamental rights when it chooses to do so.

4. Early definitions and quotes don't satisfy Plaintiffs' burden to identify specific fundamental rights.

To support their original public meaning argument, Plaintiffs also cite early dictionary definitions of the term "life" and inspirational statements made by early scholars. To be sure, those scholars described the right to life, health, and safety as fundamental rights. *See* Aplt. Br. at 58-60, 67-68 (citing Wilson, Field, Coke, Blackstone, Locke, Cicero, and Varian). So did the Framers of Utah's Constitution. *See* 1 Proceedings and Debates of the

Convention Assembled to Adopt a Constitution for the State of Utah 362 (1898). Yet Utah's framers also called the Inalienable Rights Clause a "general principle" that "declared a fundamental principle without guaranteeing it," and they compared it to another proposed provision that was merely "patriotic utterance." *Id.*; *Ray*, 2015 UT 83, ¶ 97 (Lee, A.C.J., dissenting).

In any event, those broad sentiments provide no indications about the contours of Plaintiffs' asserted rights to life and safety or establish that this Court has already extended fundamental rights status to those rights.[22] Plaintiffs must still define a precise right. *K.T.B.*, 2020 UT 51, ¶ 70; *see also Glucksberg*, 521 U.S. at 727 (noting fact that many due process rights "sound in personal autonomy does not warrant the sweeping conclusion that any and all important, intimate, and personal decisions are so protected"). Simply put, Plaintiffs have not shown the founding citizens would have understood the Inalienable Rights or Due Process Clauses protected them from policies and conduct like those alleged here.

[22] Plaintiffs' citations to corpus linguistics is similarly unhelpful, Aplt. Br. at 55-56, because they do not establish the contours of the right.

5. The broad rights Plaintiffs assert would expand the scope of substantive due process.

What's more, judicial recognition of the alleged rights to life and freedom from government endangerment would greatly expand the scope of substantive due process without any guideposts. The legislature and other government officials must regularly weigh the benefits of their decisions against the risks, which may include health and safety concerns. For example, raising the speed limit might increase the risk of accidents that cause death or serious injury. Widening a road might meet the State's needs but impact safety in the adjacent communities. And granting a permit to a mine or well might lead to emissions but help meet the state's energy needs and provide jobs for a nearby community.

All those government decisions involve striking a difficult balance between sometimes competing considerations, and there no doubt will be people upset with the choices state and local leaders make. But the elected branches are best positioned to weigh the State's needs against the risks. Recognizing general fundamental rights to life or to be protected from policies that may present health and safety risks would subject all those decisions to strict scrutiny, thus giving the Court oversight over the wisdom of a litany of policy decisions and every single permit the State grants. That is not what

the substantive Due Process Clause was designed to do. *B.B.*, 2020 UT 52, ¶ 24.

6. Plaintiffs do not have a fundamental right to be free from fossil fuel emissions.

Even if this Court chooses to look past Plaintiffs' overbroad characterization of their rights, Plaintiffs still cannot show Defendants have violated a fundamental right. The question in a due process case boils down to "the actual nature of the right in question." *J.S.*, 2014 UT 51, ¶ 59, n.22. Courts have thus reframed the alleged right in more precise terms. *See Glucksberg*, 521 U.S. at 722-23 (reframing claimed right "to choose how to die" as the "right to commit suicide [and] a right to assistance in doing so"); *Reno v. Flores*, 507 U.S. 292, 302-03 (1993) (reframing claimed right to "freedom from physical restraint" as the right "of a child who has no available parent, . . . and for whom the government is responsible, to be placed in the custody of a willing-and-able private custodian rather than of a . . . government-selected child-care institution"); *Collins v. City of Harker Heights*, 503 U.S. 115, 126 & n.9 (1992) (reframing alleged issue of whether city employee had a "right to be free from unreasonable risks of harm to his body" to whether "the Constitution imposes a duty . . . to provide . . . a safe working environment").

Here, Plaintiffs have framed their rights at "too-high a level of generality," hoping a "more general statement . . . might persuade [the Court] to embrace" their claim. *J.S.*, 2014 UT 51, ¶ 59, n.22. That strategy aside, Plaintiffs' complaint invokes a purported right to be free from fossil fuel emissions. Their requested relief makes that clear by asking for a declaration that Defendants' actions and policies that "maximiz[e], promot[e], and systematically authoriz[e] the development of fossil fuels" are violating their constitutional rights. R. 93. There is no such fundamental right.

a. Early Utah law promoted and authorized fossil fuel development.

Plaintiffs have not established that founding-era Utahns would have understood they had a fundamental right to be free from fossil fuel emissions. Mining has been important in Utah since before statehood. Philip F. Notarianni, *Mining*, Utah History Encyclopedia (1994).[23] Plaintiffs have cited no laws or other sources that suggest early Utahns understood that the government could not promote or authorize the use of fossil fuels or that they had a constitutional right to protection from any harmful side effects of those operations. Instead, early statutes show that Utahns understood the vital role of natural resource development. Utah law authorized state lands to be "leased for the purpose of obtaining" coal, oil, or gas. Revised Statutes of the

[23] https://historytogo.utah.gov/mining/

State of Utah (Revised Statutes) § 2370 (1898). It also allowed "the right of eminent domain" to be exercised for "[r]oads, railways, tunnels, ditches, flumes, pipes, and dumping places to facilitate the milling, smelting, or other reduction of ores, or the working of mines, quarries or mineral deposits." Revised Statutes § 3588 (1898); Comp. Laws of Utah ("Comp. Laws") § 3588 (1907).

Early Utah law similarly promoted natural gas. It extended eminent domain rights to "natural gas or oil pipe lines, tanks, or reservoirs." Comp Laws § 3588 (1907); *see also* Comp. Laws § 1552 (1907); Revised Statutes § 3588 (1898). And Utah law took a light-handed approach toward regulating private natural gas producers. It required well owners to fill abandoned wells and to use the gas within three months of completing the well or to "confine the gas in said well until such time as it shall be utilized." Revised Statutes §§ 1548, 1549 (1898); Comp. Laws §§ 1548, 1549 (1907). Otherwise, Utah followed the common-law rule of capture, which allowed an owner to "drill for oil or gas on its land wherever and with as many wells as the landowner" wanted. *Cowling v. Bd. of Oil, Gas & Min, Dep't of Nat. Res.*, 830 P.2d 220, 224 (Utah 1991) *reh'g denied* 1992.

In other words, Utah's early laws promoted and authorized the development of fossil fuels, with far less oversight than occurs under the current statutory framework. Early citizens' acceptance of those laws

indicates that they did not understand they had a constitutional right to be free from fossil fuel emissions.

b. Utah's early nuisance laws did not create fundamental rights.

Ignoring the history of fossil fuels laws, Plaintiffs instead argue that the "deep roots" of their rights can be found in early nuisance laws. Aplt. Br. at 64. But statutory recognition of a private tort or even criminal liability does not establish a fundamental right. While such statutes might inform the court's judgment, they "fall far short of the kind of proof necessary" to establish a constitutional claim. *Nilson v. Layton City*, 45 F.3d 369, 372 (10th Cir. 1995).

Here, the civil nuisance statutes do not establish Plaintiffs have fundamental rights to be free from fossil fuel emissions. For example, Plaintiffs contend that by 1870, the Utah territory outlawed anything "injurious to health[.]" Aplt. Br. at 64 (citing Acts, Resolutions, & Mem'ls of the Terr. of Utah (Acts), § 8-2-249 (1870)). But that early law mostly targeted property. The chapter where that provision is found is titled "Actions . . . On Real Property." Acts § 8-2, and the surrounding sections established real property actions for waste (§ 250), injuring timber (§§ 251-252), and unlawful entry (§ 253). *See also* Revised Statutes § 3506 (1898) (stating actions allowed by "any person whose property is injuriously affected, or whose personal

enjoyment is lessened by the nuisance"); s*ee also id.* §§ 3506-10 (situating nuisance statute action alongside waste, injury to trees, and unlawful entry). And the early cases Plaintiffs cite show those laws were used to protect use and enjoyment of property. Aplt. Br. at 65-66.[24]

To the extent those laws expanded liability beyond property injuries, they still do not show there was a deeply rooted right to be free of nuisances. At most, those early laws show that the legislature gave citizens private rights of action against each other. But tort liability is different from a constitutional due process violation. *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 846 (2018); *see also Tindley*, 2005 UT 30, ¶ 29, 116 P.3d 295, holding modified by *Moss v. Pete Suazo Utah Athletic Comm'n*, 2007 UT 99, ¶ 29, 175 P.3d 1042. Otherwise, substantive due process would become a mere negligence analysis.

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[24] *See Aldred v. Benton*, 77 Eng. Rep. 816 (1611) (action lies where "defendant . . . deprive[d] the plaintiff of the use and profit of his house); *Ross v. Butler*, 19 N.J. Eq. 294, 301 (N.J. Ch. 1868) (action lies "where the nuisance operates to diminish the comfort of a dwelling house"); *Kinsman v. Utah Gas & Coke Co.*, 177 P. 418, 418-19 (Utah 1918) (action lies for "property in the immediate vicinity" of the nuisance, where "homes of plaintiffs have become unhealthful and unfit for enjoyment, and the market and rental value of such premises has been greatly depreciated"); *Wasatch Oil Ref. Co. v. Wade*, 63 P.2d 1070, 1073 (Utah 1936) (action lies for property owners "located in the vicinity of" the refining plant whose "living . . . premises [are] undesirable, unsafe, uncomfortable, and dangerous"); *Ludlow v. Colorado Animal By-Prod. Co.*, 137 P.2d 347, 350 (1943) (action lies to recover damages for "depreciation of their properties occasioned by" the nuisance").

The early criminal nuisance laws also do not prove a fundamental right to be free of nuisances. Aplt. Br. at 65. *See* Revised Statutes §§ 4275, 4277 (1898); Comp. Laws § 1113x, at p. 489 (1907). Those statutes created a criminal nuisance violation, but they only made it a misdemeanor. And only an "owner, agent, or occupant" of the nuisance could be guilty of it. Comp. Laws § 1113x (1907). Those statutes did not create a nuisance claim against the government for that same conduct, or for failing to protect citizens from nuisances. In short, the legislature's use of its policy-making powers to criminalize or impose tort liability for some conduct does not equate to a recognition that citizens have a fundamental right to be protected from that conduct.

c. Courts have held that there is no fundamental right to a clean environment.

Relatedly, Plaintiffs cannot show that they have a fundamental right to be free from nuisances or fossil fuel emissions because most courts have determined that there is no right to a clean and healthy environment absent an express state constitutional provision granting that right. *See Held*, Case No. CDV-2020-307, at 94-100 (interpreting Montana constitutional guarantee to a "clean and healthful environment"). For example, a Washington appellate court interpreted Washington's due process clause—which is substantially like Utah's—and held that there is no fundamental interest "in

a healthful and peaceful environment." *Aji P.*, 480 P.3d at 200-01; *see also Clean Air Council*, 362 F.Supp.3d at 250 (rejecting claim plaintiffs have a right to a "life sustaining-climate system" and citing cases rejecting similar rights).[25] Even *Guertin v. State*, which an amicus cites, Am. Br. of Law Professors, at 10, rejected such a broad right in connection with plaintiffs' allegations that public officials had harmed them by using the Flint River to supply the municipality's drinking water without treating the water or adding chemicals "to counter the river water's known corrosivity." 912 F.3d 907, 915, 921-22 (6th Cir. 2019). Rather than recognizing a general right to a

[25] *See e.g., Barnett v. Carberry,* No. 3:08CV714(AVC), 2010 WL 11591776, *8 (D. Conn. Mar. 16, 2010) (unpublished)*, aff'd,* 420 F. App'x 67 (2d Cir. 2011) (no right to a "healthful environment" or to be free from "unreasonable [Electric and Magnetic Fields] exposure"); *SF Chapter of A. Philip Randolph Inst. v. U.S. E.P.A.,* No. C 07-04936 CRB, 2008 WL 859985, *7 (N.D. Cal. Mar. 28, 2008) (unpublished) (denying plaintiffs' challenge to power plant near their property because the "right to be free of climate change pollution . . . is not protected by" the Constitution); *Coshow v. City of Escondido*, 132 Cal. App. 4th 687, 709-710 (2005) (rejecting claim that defendant had right to fluoride-free drinking water because "[n]either the state nor federal Constitutional guarantees a right to a healthful or contaminant-free environment"); *MacNamara v. Cnty. Council*, 738 F. Supp. 134, 142 (D. Del. 1990), *aff'd* 922 F.2d 832 (3d. Cir. 1990) (denying substantive due process challenge to county approval of an electric substation because court could not find a basis to recognize right to a healthful environment); *Nat'l Sea Clammers Ass'n v. City of New York,* 616 F.2d 1222, 1238 (3d Cir. 1980), *vacated on other grounds sub nom. Middlesex Cnty. Sewerage Auth. v. Nat'l Sea Clammers Ass'n,* 453 U.S. 1 (1981) (no "constitutional right to a pollution-free environment"); *In re Agent Orange Prod. Liab. Litig.,* 475 F. Supp. 928, 934 (E.D.N.Y. 1979) (no "constitutional right to a healthful environment").

clean environment, that court recognized a narrow "right to bodily integrity [from the] knowing[] and intentional[] introduc[tion of] life-threatening substances into individuals without their consent, especially when such substances have zero therapeutic benefit." *Id.* at 922.

That is not what Plaintiffs are alleging Defendants are doing here. Defendants are not introducing life-threatening substances with no benefit into individuals without their consent. Third parties are the ones producing the fossil fuels and the resulting emissions. And fossil fuels are not without benefit like the water contaminants; the State (and much of the world) still use fossil fuels to meet energy needs. Plaintiffs' complaint is thus not like the one in *Guertin.* Their complaint is that Defendants should have different policies or should regulate third-parties differently.

d. There is no fundamental right to be protected from harm caused by third parties.

Finally, Plaintiffs cannot show they have a right to be free from fossil fuel emissions because the Constitution does not require the State to regulate the entities that are producing those fossil fuels to ensure a healthy environment. *See DeShaney,* 489 U.S. at 196-197 ("The purpose [of the Due Process Clause] was to protect the people from the State, not to ensure the State protected them from each other."). Plaintiffs claim that they are not asserting the Constitution requires Defendants to protect them from third

parties. Aplt. Br. at 53. So they argue the district court erred when it found they did not have a fundamental right to government policies or decisions that protect them from the fossil fuel emissions that are being produced by fossil fuel developers. R. 417. Despite Plaintiffs' attempt to disclaim that argument, their assertion that they have a right to be free of policies and practices that promote the development of fossil fuels by those third parties sounds like a state-created danger argument. That doctrine undermines their fundamental rights claims.

The state-created danger doctrine is a narrow exception to the general rule that States do not have a duty to protect individuals from harms from third parties. *Gray v. Univ. of Colo. Hosp. Auth.*, 672 F.3d 909, 922 (10th Cir. 2012); *Moore v. Guthrie*, 438 F.3d 1036, 1042 (10th Cir. 2006). Under that exception, a "state actor may be held liable for the violent acts of a third party if the state actor" engaged in affirmative actions that "created the danger" that caused the harm. *Ruiz v. McDonnell*, 299 F.3d 1173, 1182-83 (10th Cir. 2002).

The state-created danger doctrine generally only protects a plaintiff against third party harms if the affirmative government conduct "imposes an immediate threat of harm, which by its nature has a limited range and duration." *Id.* at 1183. The affirmative conduct must also "be directed at a

discrete plaintiff" instead of "the public at large." *Id.* at 1184. And the affirmative government conduct must shock the conscience. *Id.* at 1181-82.

A defendant's adoption of "policies and customs" seldom satisfies those tests because those acts do not put a particular plaintiff at substantial risk of immediate or proximate harm but instead "affect[] a broader populace." *Gray*, 672 F.3d at 926. Licensing decisions also fail to qualify for the exception because they present "threats of an indefinite range and duration" that affect "the public at large." *Ruiz*, 299 F.3d at 1184.

This doctrine shows Plaintiffs do not have a fundamental right to be free from fossil fuel emissions created by third party developers, even if the State regulates or promotes fossil fuels. Among other things, any alleged threat imposed by statutory policies or a "pattern and practice" of past and continuing conduct is not "an immediate threat of harm" but a threat of "an indefinite range and duration." *Ruiz*, 299 F.3d at 1184. State permitting and other fossil fuels decisions also are not directed specifically at Plaintiffs. Those decisions affect the general populace. *Gray*, 672 F.3d at 926.

Finally, those alleged policies and practices are not conscience-shocking. Courts look at three factors to make that determination: (1) "the need for restraint in defining" substantive due process claims; (2) the concern that constitutional liability "not replace state tort law;" and (3) "the need for deference to local policymaking bodies in making decisions impacting public

safety." *Ruiz*, 299 F.3d at 1183-84. For reasons already discussed, finding legislative energy policies and a general "pattern and practice" of conduct that has spanned decades to be conscience-shocking would violate all those considerations. *See supra* at 30-35, 39-42. Regulating fossil fuels are precisely the types of decisions the "Framers were content to leave . . . to the democratic political processes." *DeShaney,* 489 U.S. at 196-197.

At bottom, Plaintiffs' general allegations about the rights to life and to be free from harmful government policies do not plead a fundamental right with the required specificity. *B.B.*, 2020 UT 52, ¶ 25. Their complaint instead implicates a right to be free from fossil fuel emissions or to a clean environment. They cannot show those precise rights are "so rooted in the traditions and conscience of our people as to be ranked as fundamental and implicit in the concept of ordered liberty." *Glucksberg*, 521 U.S. at 721 (internal citations omitted). Accordingly, the district court properly recognized Plaintiffs had not alleged a fundamental right.

B. The challenged statutes and conduct pass rational basis review.

Without a fundamental right, the Court applies a rational basis test to the challenged laws and actions. *Angilau*, 2011 UT 3, ¶ 10. Rational basis review is "limited to determining whether the legislature overstepped the bounds of its constitutional authority in enacting the statute at issue, not

whether it made wise policy in doing so." *Id.* A statute is "presumed to be constitutional," *Vega v. Jordan Valley Med. Ctr., L.P.*, 2019 UT 35, ¶ 12, 449 P.3d 31, and the court will uphold a statute or action "if it has a reasonable relation to a proper legislative purpose, and is neither arbitrary nor discriminatory." *Angilau*, 2011 UT 3, ¶ 10. Economic statutes "rarely violate[] due process" under this standard. *J.S.,* 2014 UT 51, ¶ 34.

The challenged statutes easily pass rational basis review. Plaintiffs have not alleged that the laws are arbitrary or discriminatory, and there are rational bases supporting them. The stated purpose of Utah's energy policy is that Utah "shall have adequate, reliable, affordable, sustainable, and clean energy sources." Utah Code § 79-6-301(1)(a). It is rational for Utah to promote nonrenewable energy resources like oil, gas, and coal—along with renewable resources—to meet those needs. *Id.* It is similarly rational to promote coal, *id.* §§ 40-10-1(1), -17, and encourage recovery of the full amount of oil or gas a well or pool can produce, *id.* §§ 40-6-1, -13.

The challenged oil and gas provisions are also rationally related to the legislative purpose of protecting the land, preventing waste of the resource, and protecting the owners' correlative property rights. *Cowling*, 830 P.2d at 224-25 (discussing purposes of current oil and gas act). For example, the coal regulations are designed to minimize the chance land will be disturbed more

than once by requiring a single mine to produce the maximum resource. Utah Code § 40-10-17(2)(a).

The history of Utah's oil and gas statutes reveals a similar intent. Before 1955, oil and gas drilling in Utah was governed by the common-law rule of capture, which allowed a landowner to drill "wherever and with as many wells as the landowner thought appropriate." *Cowling*, 830 P.2d at 224; *Bennion v. Graham Res., Inc.*, 849 P.2d 569, 570 (Utah 1993). That rule "encouraged the drilling of more wells than necessary to drain a field, and it permitted techniques and rates of production that augmented the profits of the property owner whose land was producing, but wasted the resources of the field as a whole." *Cowling*, 830 P.2d at 224-25. The legislature thus enacted the Utah Oil and Gas Conservation Act in 1955, which was later superseded by the current act. *Id.* (discussing Utah Code Ann. § 40-6-1(1983)); *see also* Utah Code § 40-6-1. Without the legislature's intervention, property owners could extract as much as they wanted using as many wells as they wanted, all while charging higher prices. That would not improve air quality, minimize the development and use of oil and gas, or meet the State's need for affordable energy.

Defendants' conduct also is rationally related to the stated policies. Defendants issue mining permits under the laws passed by the legislature to protect Utah's resources from loss through waste and regulate how oil, gas,

and coal are extracted to protect the land and prevent a race to the bottom by competing owners. Utah Code § 40-6-1, -13; *Cowling*, 830 P.2d at 224-25. And while Defendants do not know what other conduct is allegedly at issue, they are all interested in ensuring that Utah has enough affordable and reliable energy to meet Utah's needs.

Plaintiffs' complaint alleges the challenged statutes, policies, and practices are not rational because those laws and policies put them at risk and undermine the State's economy. R. 86, 90. But Plaintiffs' disagreement with the decisions of state leaders does not mean state leaders lacked rational reasons for making them. Plaintiffs' claims ask this Court to second guess the wisdom of the legislature's decisions, and that is not the purpose of rational basis review.

Plaintiffs have a right to disagree with the decisions the legislative and executive branches make to ensure Utahns have adequate, reliable, and affordable energy. Like the other issues facing state leaders, there may be tradeoffs and disagreements about how best to balance the State's needs against other considerations. But those types of balancing decisions fall inside the territory of the elected branches under the Separation of Powers Clause. Plaintiffs' concerns must be raised with their elected representatives.

Conclusion

For the reasons discussed above, this Court can affirm the district court's order dismissing the complaint.

Respectfully submitted,

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Certificate of Compliance

1. This brief complies with the total type-volume limitations of this Court's September 5, 2023 order because it contains 15,970 words, excluding the parts of the brief exempted by Rule 24(g)(2).

2. This brief complies with the typeface requirements of Utah Rule of Appellate Procedure 27(a) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 13-point Century Schoolbook font.

3. This brief complies with the non-public information requirements of Utah Rule of Appellate Procedure 21(h) because this brief contains no non-public information.

/s/ Erin T. Middleton
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Certificate of Service

I certify that on February 20, 2024, I served a true and correct copy of the above Brief of Appellees by electronic mail to the following:

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/s/ Erin T. Middleton

Addenda

1. Utah Const. art. I, § 1
2. Utah Const. art. I, § 7
3. Utah Code § 79-6-301
4. Utah Code § 40-6-1
5. Utah Code § 40-6-13
6. Utah Code § 40-10-1
7. Utah Code § 40-10-17
8. Memorandum Decision and Order (R. 408-419)
9. Complaint (R. 1-94)

Addendum 1

Utah Const. art. I, § 1

West's Utah Code Annotated
Constitution of Utah
Article I. Declaration of Rights

U.C.A. 1953, Const. Art. 1, § 1

Sec. 1. [Inherent and inalienable rights]

Effective: January 1, 2021
Currentness

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.

Credits
Laws 2019, S.J.R. 7, § 1, eff. Jan. 1, 2021.

U.C.A. 1953, Const. Art. 1, § 1, UT CONST Art. 1, § 1
Current with laws of the 2023 Second Special Session. Some statutes sections may be more current, see credits for details.

End of Document

Addendum 2

Utah Const. art. I, § 7

West's Utah Code Annotated
Constitution of Utah
Article I. Declaration of Rights

U.C.A. 1953, Const. Art. 1, § 7

Sec. 7. [Due process of law]

Currentness

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

U.C.A. 1953, Const. Art. 1, § 7, UT CONST Art. 1, § 7
Current with laws of the 2023 Second Special Session. Some statutes sections may be more current, see credits for details.

End of Document

Addendum 3

Utah Code § 79-6-301

West's Utah Code Annotated
Title 79. Natural Resources (Refs & Annos)
Chapter 6. Utah Energy Act
Part 3. State Energy Policy

U.C.A. 1953 § 79-6-301
Formerly cited as UT ST §§ 63-53b-301, 63M-4-301

§ 79-6-301. State energy policy

Effective: May 3, 2023
Currentness

(1) It is the policy of the state that:

(a) Utah shall have adequate, reliable, affordable, sustainable, and clean energy resources;

(b) Utah shall promote the development of:

(i) nonrenewable energy resources, including natural gas, coal, oil, oil shale, and oil sands;

(ii) renewable energy resources, including geothermal, solar, wind, biomass, biofuel, and hydroelectric;

(iii) nuclear power generation technologies certified for use by the United States Nuclear Regulatory Commission including molten salt reactors producing medical isotopes;

(iv) alternative transportation fuels and technologies;

(v) infrastructure to facilitate energy development, diversified modes of transportation, greater access to domestic and international markets for Utah's resources, and advanced transmission systems;

(vi) energy storage, pumped storage, and other advanced energy systems, including hydrogen from all sources;

(vii) electricity systems that can be controlled at the request of grid operators to meet system load demands, to ensure an adequate supply of dispatchable energy generation resources;

(viii) electricity systems that are stable and capable of serving load without accelerating damage to customer equipment; and

(ix) increased refinery capacity;

(c) Utah shall promote the development of resources and infrastructure sufficient to meet the state's growing demand, while contributing to the regional and national energy supply, thus reducing dependence on international energy sources;

(d) Utah shall promote the development of resources, tools, and infrastructure to enhance the state's ability to:

(i) respond effectively to significant disruptions to the state's energy generation, energy delivery systems, or fuel supplies;

(ii) maintain adequate supply, including reserves of proven and cost-effective dispatchable electricity reserves to meet grid demand; and

(iii) ensure the state's energy independence by promoting the use of energy resources generated within the state;

(e) Utah shall allow market forces to drive prudent use of energy resources, although incentives and other methods may be used to ensure the state's optimal development and use of energy resources in the short- and long-term;

(f) Utah shall pursue energy conservation, energy efficiency, and environmental quality;

(g) Utah shall promote the development of a secure supply chain from resource extraction to energy production and consumption;

(h)(i) state regulatory processes should be streamlined to balance economic costs with the level of review necessary to ensure protection of the state's various interests; and

(ii) where federal action is required, Utah will encourage expedited federal action and will collaborate with federal agencies to expedite review;

(i) Utah shall maintain an environment that provides for stable consumer prices that are as low as possible while providing producers and suppliers a fair return on investment, recognizing that:

(i) economic prosperity is linked to the availability, reliability, and affordability of consumer energy supplies; and

(ii) investment will occur only when adequate financial returns can be realized;

(j) Utah shall promote training and education programs focused on developing a comprehensive understanding of energy, including:

(i) programs addressing:

(A) energy conservation;

(B) energy efficiency;

(C) supply and demand; and

(D) energy related workforce development; and

(ii) energy education programs in grades kindergarten through grade 12; and

(k) Utah shall promote the use of clean energy sources by considering the emissions of an energy resource throughout the entire life cycle of the energy resource.

(2) State agencies are encouraged to conduct agency activities consistent with Subsection (1).

(3) A person may not file suit to challenge a state agency's action that is inconsistent with Subsection (1).

Credits

Laws 2021, c. 280, § 118, eff. July 1, 2021; Laws 2023, c. 186, § 4, eff. May 3, 2023; Laws 2023, c. 195, § 3, eff. May 3, 2023.

U.C.A. 1953 § 79-6-301, UT ST § 79-6-301

Current with laws of the 2023 Second Special Session. Some statutes sections may be more current, see credits for details.

End of Document

Addendum 4

Utah Code § 40-6-1

West's Utah Code Annotated
Title 40. Mines and Mining
Chapter 6. Board and Division of Oil, Gas, and Mining (Refs & Annos)

U.C.A. 1953 § 40-6-1

§ 40-6-1. Declaration of public interest

Currentness

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.

Credits
Laws 1983, c. 205, § 1.

U.C.A. 1953 § 40-6-1, UT ST § 40-6-1
Current with laws of the 2023 Second Special Session. Some statutes sections may be more current, see credits for details.

End of Document

Addendum 5

Utah Code § 40-6-13

West's Utah Code Annotated
Title 40. Mines and Mining
Chapter 6. Board and Division of Oil, Gas, and Mining (Refs & Annos)

U.C.A. 1953 § 40-6-13

§ 40-6-13. Restrictions of production not authorized

Currentness

This act [1] 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.

Credits
Laws 1983, c. 205, § 1.

Footnotes

1 See Laws 1983, c. 205 that enacted this chapter.

U.C.A. 1953 § 40-6-13, UT ST § 40-6-13
Current with laws of the 2023 Second Special Session. Some statutes sections may be more current, see credits for details.

End of Document

Addendum 6

Utah Code § 40-10-1

West's Utah Code Annotated
Title 40. Mines and Mining
Chapter 10. Coal Mining and Reclamation (Refs & Annos)

U.C.A. 1953 § 40-10-1

§ 40-10-1. Legislative finding

Currentness

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.

(2) The expansion of coal mining in Utah to meet the nation's energy needs makes even more urgent the establishment of appropriate standards to minimize damage to the environment and to productivity of the soil and to protect the health and safety of the public.

(3) Surface mining and reclamation technology is now developed so that effective and reasonable regulation of surface coal mining operations is an appropriate and necessary means to minimize so far as practicable the adverse social, economic, and environmental effects of the mining operations.

(4) In recognition of the innate differences between coal and other mineral deposits and between surface and underground mining methods, the Legislature perceives a need for a separate chapter for effective and reasonable regulation of such operations.

Credits
Laws 1979, c. 145, § 1.

U.C.A. 1953 § 40-10-1, UT ST § 40-10-1
Current with laws of the 2023 Second Special Session. Some statutes sections may be more current, see credits for details.

End of Document

Addendum 7

Utah Code § 40-10-17

West's Utah Code Annotated
Title 40. Mines and Mining
Chapter 10. Coal Mining and Reclamation (Refs & Annos)

U.C.A. 1953 § 40-10-17

§ 40-10-17. Performance standards for all coal mining and reclamation operations--Additional standards for steep-slope surface coal mining--Variances

Currentness

(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.

(b) Restore the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses of which there is reasonable likelihood, so long as the use or uses does not present any actual or probable hazard to public health or safety or pose any actual or probable threat of water diminution or pollution, and the permit applicant's declared proposed land use following reclamation is not considered to be impractical or unreasonable, inconsistent with applicable land use policies and plans, involves unreasonable delay in implementation, or is violative of federal, state, or local law.

(c) Except as provided in Subsection (3) with respect to all surface coal mining operations backfill, compact (where advisable to insure stability or to prevent leaching of toxic materials) and grade in order to restore the approximate original contour of the land with highwalls, spoil piles, and depressions eliminated (unless small depressions are needed in order to retain moisture to assist revegetation or as otherwise authorized pursuant to this chapter); but in surface coal mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit and the thickness of the coal deposits relative to the volume of the overburden is large and where the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour, the operator, at a minimum, shall backfill, grade, and compact (where advisable) using all available overburden and other spoil and waste materials to attain the lowest practicable grade but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region. In surface coal mining where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour, the operator shall, after restoring the approximate contour, backfill, grade, and compact (where advisable) the excess overburden and other spoil and waste materials to attain the lowest grade but more than the angle of repose, and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding

region and that the overburden or spoil shall be shaped and graded in such a way as to prevent slides, erosion, and water pollution and is revegetated in accordance with the requirements of this chapter.

(d) Stabilize and protect all surface areas, including spoil piles affected by the surface coal mining and reclamation operation to effectively control erosion and attendant air and water pollution.

(e) Remove the topsoil from the land in a separate layer, replace it on the backfill area, or if not utilized immediately, segregate it in a separate pile from other spoil, and when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful cover by quick growing plant or other means thereafter so that the topsoil is preserved from wind and water erosion, remains free of any contamination by other acid or toxic material, and is in a usable condition for sustaining vegetation when restored during reclamation; except if topsoil is of insufficient quantity or of poor quality for sustaining vegetation, or if other strata can be shown to be more suitable for vegetation requirements, then the operator shall remove, segregate, and preserve in a like manner the other strata which is best able to support vegetation.

(f) Restore the topsoil or the best available subsoil which is best able to support vegetation.

(g) For all prime farmlands, as identified in the rules, to be mined and reclaimed, specifications for soil removal, storage, replacement, and reconstruction, the operator shall, as a minimum, be required to:

(i) segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity, and if not utilized immediately, stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(ii) segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of these horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil, and if not utilized immediately, stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(iii) replace and regrade the root zone material described in Subsection (2)(g)(ii) above with proper compaction and uniform depth over the regraded spoil material; and

(iv) redistribute and grade in a uniform manner the surface soil horizon described in Subsection (2)(g)(i).

(h) Create, if authorized in the approved mining and reclamation plan and permit, permanent impoundments of water on mining sites as part of reclamation activities only when it is adequately demonstrated that:

(i) the size of the impoundment is adequate for its intended purposes;

(ii) the impoundment dam construction will be so designed as to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under Public Law 83-566 (16 U.S.C. 1006);

(iii) the quality of impounded water will be suitable on a permanent basis for its intended use and that discharges from the impoundment will not degrade the water quality below water quality standards established pursuant to applicable federal and state law in the receiving stream;

(iv) the level of water will be reasonably stable;

(v) final grading will provide adequate safety and access for proposed water users; and

(vi) these water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

(i) Conducting any augering operation associated with surface mining in a manner to maximize recoverability of mineral reserves remaining after the operation and reclamation are complete and seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the division determines that the resulting impoundment of water in the auger holes may create a hazard to the environment or the public health or safety; but the permitting authority may prohibit augering if necessary to maximize the utilization, recoverability, or conservation of the solid fuel resources or to protect against adverse water quality impacts.

(j) Minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quality and quantity of water in surface and groundwater systems both during and after surface coal mining operations and during reclamation by:

(i) avoiding acid or other toxic mine drainage by such measures as, but not limited to:

(A) preventing or removing water from contact with toxic-producing deposits;

(B) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses; and

(C) casing, sealing, or otherwise managing boreholes, shafts, and wells and keep acid or other toxic drainage from entering ground and surface waters;

(ii)(A) conducting surface coal mining operations so as to prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event shall contributions be in excess of requirements set by applicable state or federal law; and

(B) constructing any siltation structures pursuant to this Subsection (2)(j)(ii) prior to commencement of surface coal mining operations, such structures to be certified by a qualified registered engineer to be constructed as designed and as approved in the reclamation plan;

(iii) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the division;

(iv) restoring recharge capacity of the mined area to approximate premining conditions;

(v) avoiding channel deepening or enlargement in operations requiring the discharge of water from mines;

(vi) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the state; and

(vii) such other actions as the division may prescribe.

(k) With respect to surface disposal of mine wastes, tailings, coal processing wastes, and other waste in areas other than the mine working or excavations, stabilize all waste piles in designated areas through construction in compacted layers, including the use of incombustible and impervious materials, if necessary, and assure the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to the provisions of this chapter.

(l) Refrain from surface coal mining within 500 feet from active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners; but the division shall permit an operator to mine near, through, or partially through an abandoned underground mine or closer to an active underground mine if:

(i) the nature, timing, and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are jointly approved by the departments, divisions, and agencies concerned with surface mine reclamation and the health and safety of underground miners; and

(ii) the operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.

(m) Design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon, in accordance with the standards and criteria developed pursuant to the division's rules, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes, and used either temporarily or permanently as dams or embankments.

(n) Insure that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are treated or buried and compacted or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters and that contingency plans are developed to prevent sustained combustion.

(o) Insure that explosives are used only in accordance with existing state and federal law and the rules adopted by the board, which shall include provisions to:

(i) provide adequate advance written notice to local governments and residents who might be affected by the use of the explosives by:

(A) publication of the planned blasting schedule:

(I) in a newspaper of general circulation in the locality; and

(II) as required in Section 45-1-101; and

(B) mailing a copy of the proposed blasting schedule to every resident living within 1/2 mile of the proposed blasting site and by providing daily notice to resident/occupiers in these areas prior to any blasting;

(ii) maintain for a period of at least three years and make available for public inspection upon request a log detailing the location of the blasts, the pattern and depth of the drill holes, the amount of explosives used per hole, and the order and length of delay in the blasts;

(iii) limit the type of explosives and detonating equipment, the size, the timing and frequency of blasts based upon the physical conditions of the site so as to prevent injury to persons, damage to public and private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of ground or surface water outside the permit area;

(iv) require that all blasting operations be conducted by trained and competent persons, and to implement this requirement, the division shall promulgate rules requiring the training, examination, and certification of persons engaging in or directly responsible for blasting or the use of explosives in surface and coal mining operations; and

(v) provide that upon the request of a resident or owner of a man-made dwelling or structure within 1/2 mile of any portion of the permitted area, the applicant or permittee shall conduct a preblasting survey of the structures and submit the survey to the division and a copy to the resident or owner making the request, the area of which survey shall be decided by the division and shall include such provisions as promulgated.

(p) Insure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations; but where the applicant proposes to combine surface mining operations with underground mining operations to assure maximum practical recovery of the mineral resources, the division may grant a variance for specific areas within the reclamation plan from the requirement that reclamation efforts proceed as contemporaneously as practicable to permit underground operations prior to reclamation:

(i) if the division finds in writing that:

(A) the applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations;

(B) the proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple disturbance of the surface;

(C) the applicant has satisfactorily demonstrated that the plan for the underground mining operations conforms to requirements for underground mining in the jurisdiction and that permits necessary for the underground mining operations have been issued by the appropriate authority;

(D) the areas proposed for the variance have been shown by the applicant to be necessary for the implementing of the proposed underground mining operations;

(E) no substantial adverse environmental damage, either onsite or offsite, will result from the delay in completion of reclamation as required by this chapter; and

(F) provisions for the offsite storage of spoil will comply with Subsection (2)(v);

(ii) if the board has adopted specific rules to govern the granting of the variances in accordance with the provisions of this Subsection (2)(p) and has imposed such additional requirements as considered necessary;

(iii) if variances granted under this Subsection (2)(p) are to be reviewed by the division not more than three years from the date of issuance of the permit; and

(iv) if liability under the bond filed by the applicant with the division pursuant to Section 40-10-15 shall be for the duration of the underground mining operations and until the requirements of this Subsection (2) and Section 40-10-16 have been fully complied with.

(q) Insure that the construction, maintenance, and postmining conditions of access roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property.

(r) Refrain from the construction of roads or other access ways up a stream bed or drainage channel or in such proximity to the channel so as to seriously alter the normal flow of water.

(s) Establish on the regraded areas and all other lands affected, a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area; except that introduced species may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan.

(t)(i) Assume the responsibility for successful revegetation, as required by Subsection (2)(s), for a period of five full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with Subsection (2)(s), except in those areas or regions of the state where the annual average precipitation is 26 inches or less, then the operator's assumption of responsibility and liability will extend for a period of 10 full years after the last year of augmented seeding, fertilizing, irrigation, or other work; but when the division approves a long-term intensive agricultural postmining land use, the applicable five or 10 year period of responsibility for revegetation shall commence at the date of initial planting for this long-term intensive, agricultural postmining land use, except when the division issues a written finding approving a long-term, intensive, agricultural postmining land use, as part of the mining and reclamation plan, the division may grant exception to the provisions of Subsection (2)(s); and

(ii) on lands eligible for remining, assume the responsibility for successful revegetation for a period of two full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with the applicable standards, except in areas of the state where the average annual precipitation is 26 inches or less, assume the responsibility for successful revegetation for a period of five full years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with the applicable standards.

(u) Protect offsite areas from slides or damage occurring during the surface coal mining and reclamation operations and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area.

(v) Place all excess spoil material resulting from coal surface mining and reclamation activities in a manner that:

(i) spoil is transported and placed in a controlled manner in position for concurrent compaction and in a way to assure mass stability and to prevent mass movement;

(ii) the areas of disposal are within the bonded permit areas and all organic matter shall be removed immediately prior to spoil placement;

(iii) appropriate surface and internal drainage systems and diversion ditches are used so as to prevent spoil erosion and movement;

(iv) the disposal area does not contain springs, natural water courses, or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains in a manner that filtration of the water into the spoil pile will be prevented;

(v) if placed on a slope, the spoil is placed upon the most moderate slope among those upon which, in the judgment of the division, the spoil could be placed in compliance with all the requirements of this chapter and shall be placed, where possible, upon or above a natural terrace, bench, or berm, if this placement provides additional stability and prevents mass movement;

(vi) where the toe of the spoil rests on a downslope, a rock toe buttress of sufficient size to prevent mass movement, is constructed;

(vii) the final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses;

(viii) design of the spoil disposal area is certified by a qualified professional engineer, and to implement this requirement, the division shall promulgate rules regarding the certification of engineers in the area of spoil disposal design; and

(ix) all other provisions of this chapter are met.

(w) Meet such other criteria as are necessary to achieve reclamation in accordance with the purposes of this chapter, taking into consideration the physical, climatological, and other characteristics of the site.

(x) To the extent possible, using the best technology currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife, and related environmental values, and achieve enhancement of these resources where practicable.

(y) Provide for an undisturbed natural barrier beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for the distance as the division shall determine shall be retained in place as a barrier to slides and erosion.

(3)(a) Where an applicant meets the requirements of Subsections (3)(b) and (c), a permit without regard to the requirement to restore to approximate original contour provided in Subsections (2)(c), (4)(b), and (4)(c) may be granted for the surface mining of coal where the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill (except as provided in this Subsection (3)) by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, and capable of supporting postmining uses in accord with the requirements of this Subsection (3).

(b) In cases where an industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use is proposed for the postmining use of the affected land, the division may grant a permit for a surface mining operation of the nature described in Subsection (3)(a) pursuant to procedures and criteria set forth in the rules, including:

(i) the applicant's presentation of specific plans for the proposed postmining land use which meet criteria concerning the type of use proposed;

(ii) the applicant's demonstration that the proposed use would be consistent with adjacent land uses and existing state and local land use plans and programs and with other requirements of this chapter; and

(iii) procedures whereby the division provides the governing body of the unit of general-purpose government in which the land is located and any state or federal agency which the division, in its discretion, determines to have an interest in the proposed use, an opportunity of not more than 60 days to review and comment on the proposed use.

(c) All permits granted under the provisions of this Subsection (3) shall be reviewed not more than three years from the date of issuance of the permit, unless the applicant affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan.

(4) The following performance standards shall be applicable to steep-slope surface coal mining and shall be in addition to those general performance standards required by this section; but the provisions of this Subsection (4) shall not apply to those situations in which an operator is mining on flat or gently rolling terrain, on which an occasional steep slope is encountered through which the mining operation is to proceed, leaving a plain or predominantly flat area or where an operator is in compliance with provisions of Subsection (3):

(a) Insure that when performing surface coal mining on steep slopes, no debris, abandoned or disabled equipment, spoil material, or waste mineral matter be placed on the downslope below the bench or mining cut; but spoil material in excess of that required for the reconstruction of the approximate original contour under the provisions of Subsection (2)(c) or this Subsection (4) shall be permanently stored pursuant to Subsection 40-10-17(2)(v).

(b) Complete backfilling with spoil material shall be required to cover completely the highwall and return the site to the appropriate original contour, which material will maintain stability following mining and reclamation.

(c) The operator may not disturb land above the top of the highwall unless the division finds that the disturbance will facilitate compliance with the environmental protection standards of this section; but the land disturbed above the highwall shall be limited to that amount necessary to facilitate this compliance.

(d) For the purposes of this Subsection (4), “steep slope” means any slope above 20 degrees or such lesser slope as may be defined by the division after consideration of soil, climate, and other characteristics of an area.

(5) The board shall promulgate specific rules to govern the granting of variances from the requirement to restore to approximate original contour provided in Subsection (4)(b) pursuant to procedures and criteria set forth in those rules including:

(a) written request by the surface owner concerning the proposed use;

(b) approval of the proposed use as an equal or better economic or public use; and

(c) approval of the proposed use as improving the watershed control in the area and as using only such amount of spoil as is necessary to achieve the planned postmining land use.

Credits

Laws 1979, c. 145, § 1; Laws 1981, c. 175, § 4; Laws 1994, c. 219, § 14; Laws 1997, c. 99, § 4, eff. May 5, 1997; Laws 2004, c. 230, § 2, eff. May 3, 2004; Laws 2009, c. 309, § 2, eff. May 12, 2009; Laws 2009, c. 388, § 137, eff. May 12, 2009.

U.C.A. 1953 § 40-10-17, UT ST § 40-10-17

Current with laws of the 2023 Second Special Session. Some statutes sections may be more current, see credits for details.

End of Document

Addendum 8

Memorandum Decision and Order (R. 408-419)

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

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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STATE OF UTAH
THIRD DISTRICT COURT
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Addendum 9

Complaint (R. 1-94)

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

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Attorneys for Plaintiffs

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).

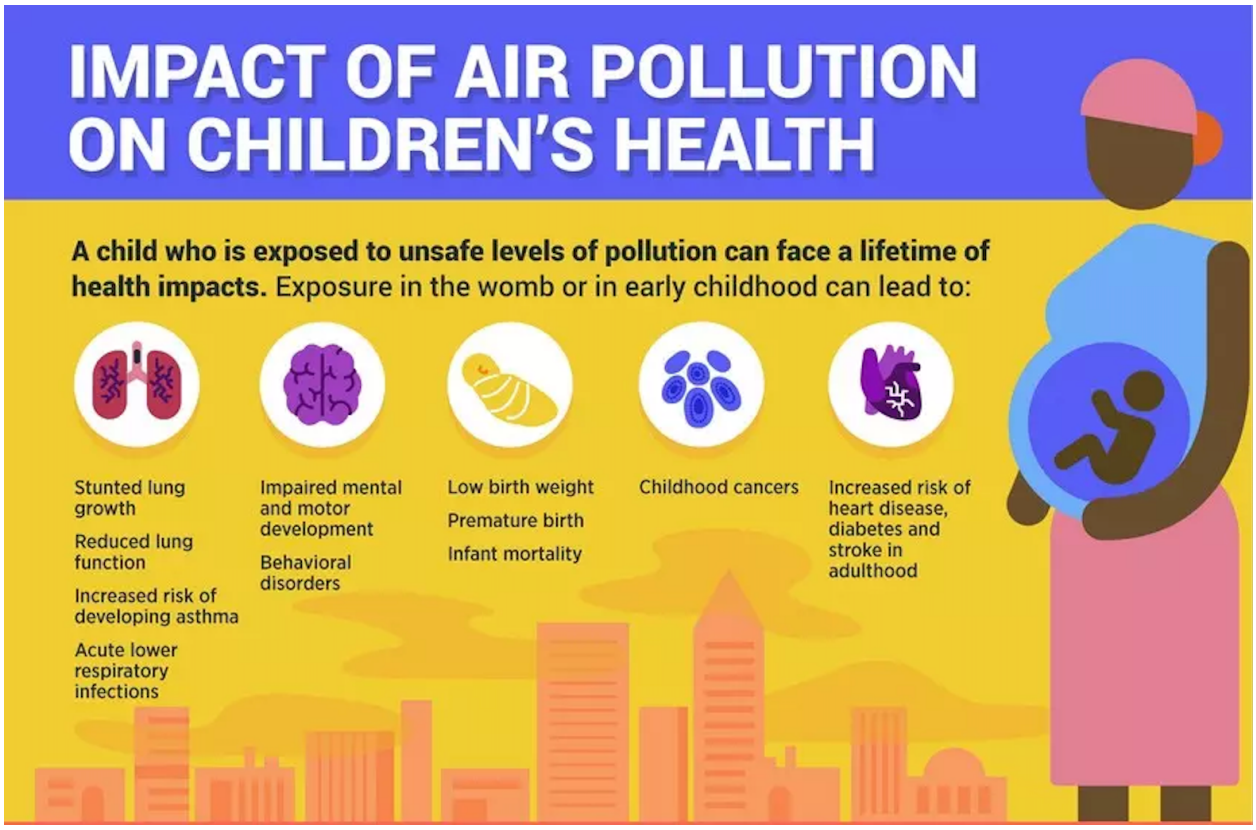

Figure 1: The harms to children's health from air pollution begin with early exposure and last a lifetime.[7]

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.

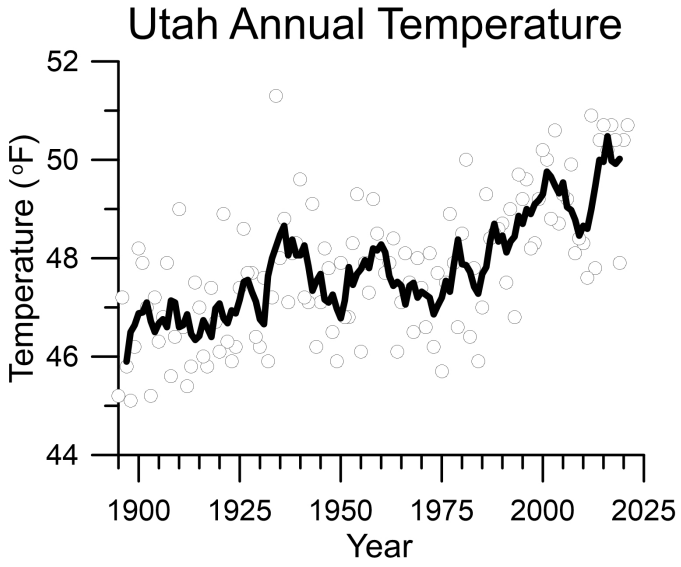

Figure 2: Utah Average Annual Temperatures from 1895-2021; circular symbols indicate individual years' temperatures with the black line indicating the five-year moving average.

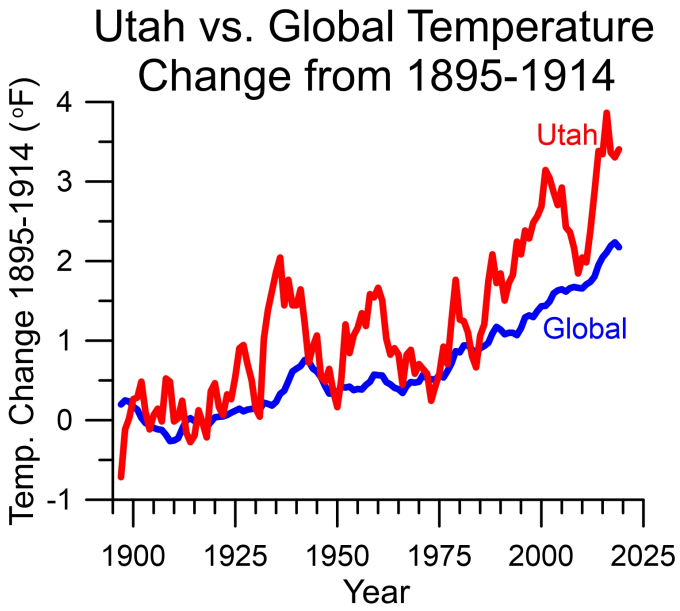

Figure 3: Change in annual temperatures from 1895-1914 average for Utah (red: five-year moving average) and the globe (blue: five-year moving average).

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).

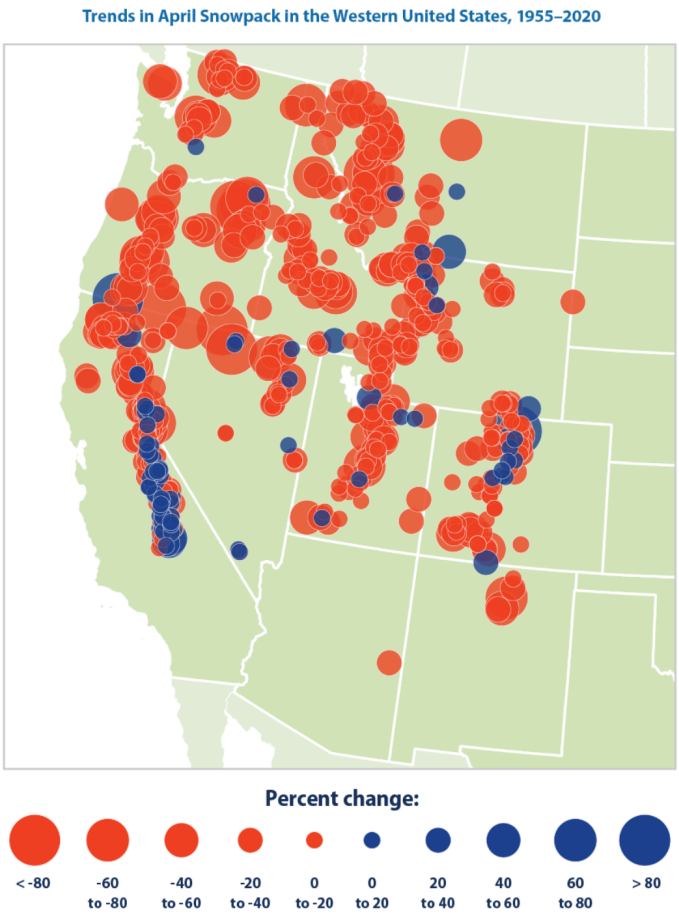

Figure 4: Trends in April snowpack, the month snowpack usually peaks in Utah, between 1955–2020.[9]

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.

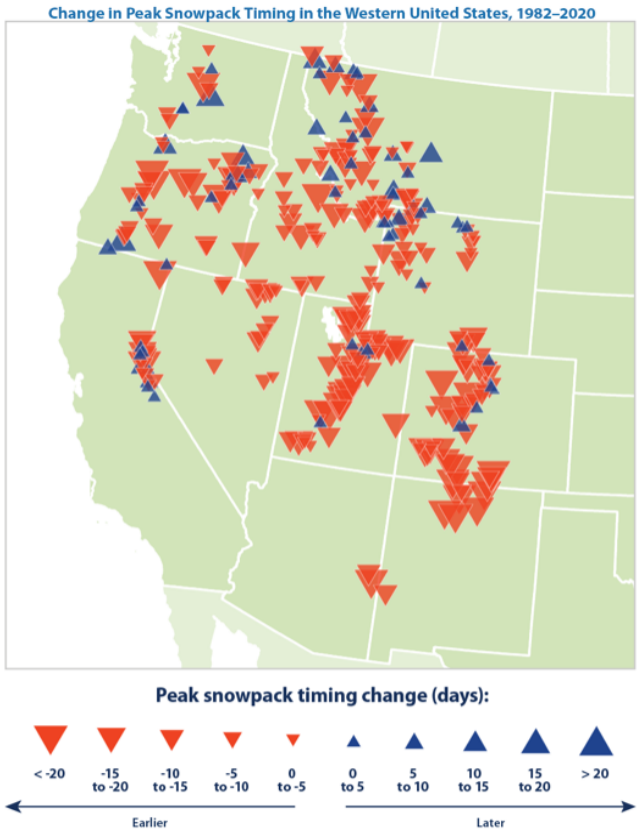

Figure 5: Change in date of peak snowpack in the Western U.S. from 1982 to 2020.[10]

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).

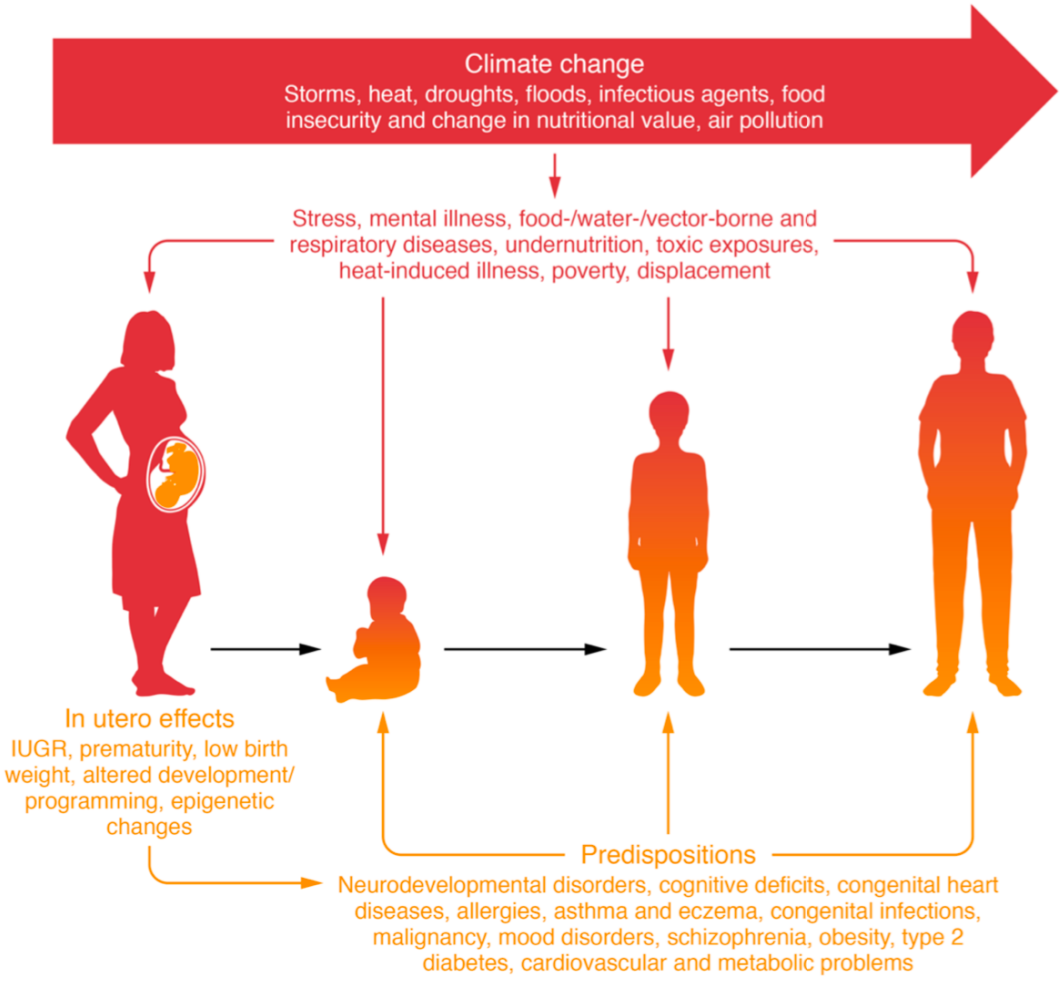

Figure 6: The harmful effects of climate disruption and air quality impairment on children start before they are born and result in lifelong hardships.[11]

[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.

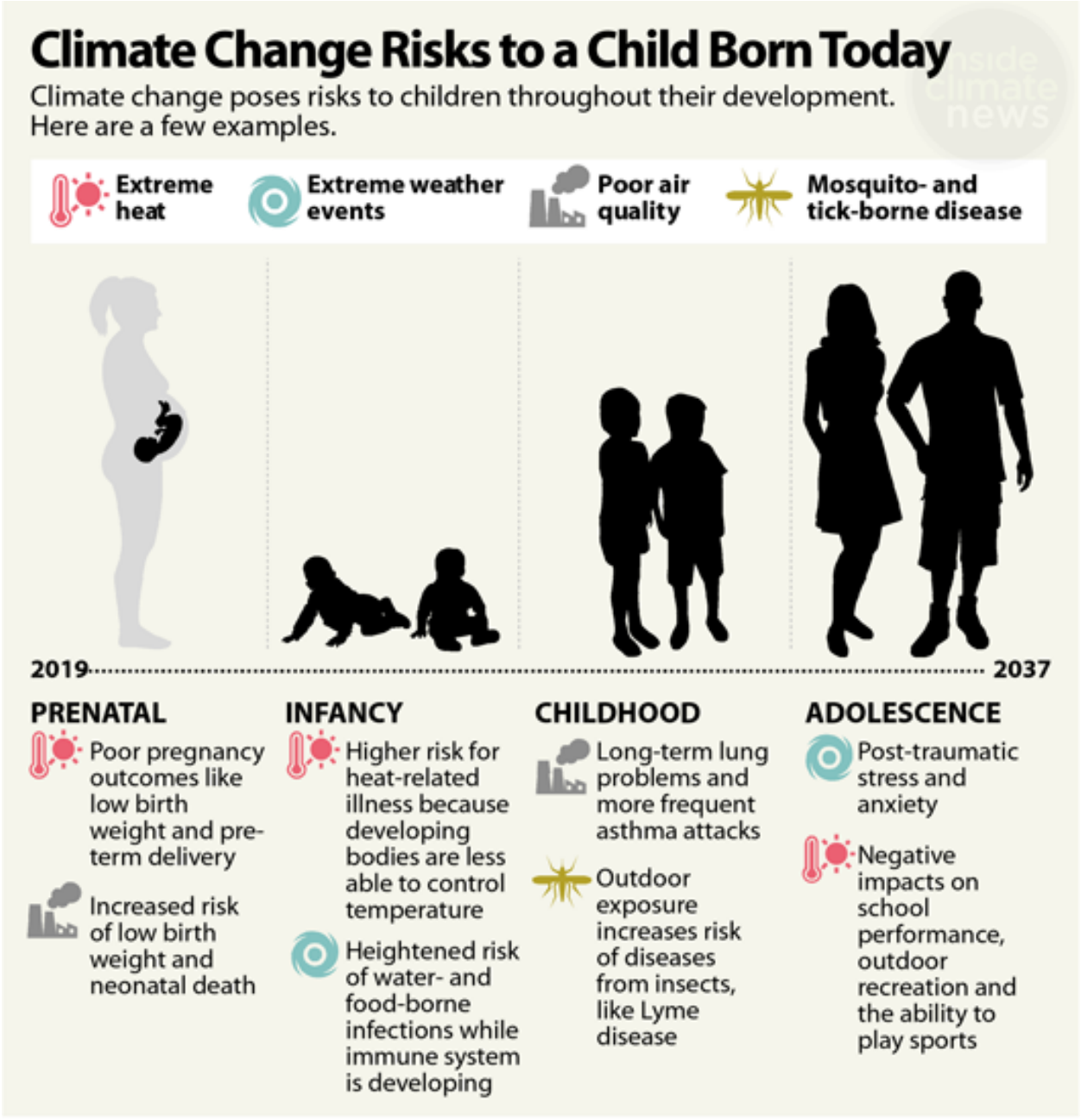

Figure 7: The harmful effects of climate disruption and air quality impairment on children throughout their development.

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).

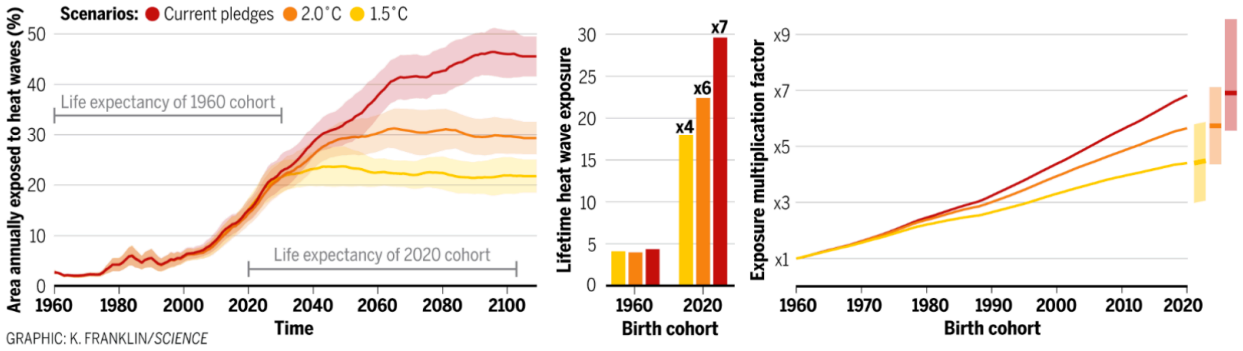

Figure 8: Left: Global land area exposed to heat waves annually under three GHG emissions scenarios. Middle: Lifetime heatwave exposure for persons born in 1960 and 2020 under three emissions scenarios. Numbers above bars indicate exposure multiplication factors relative to persons born in 1960. Right: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

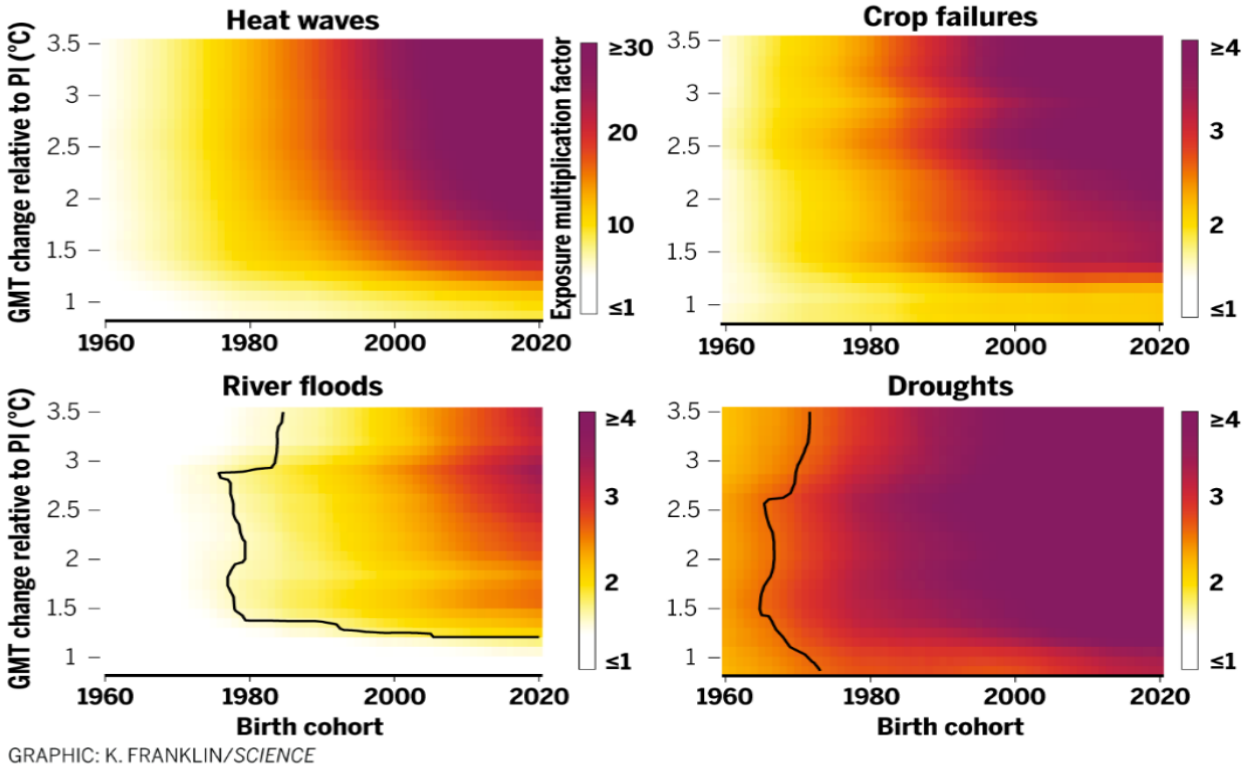

Figure 9: Extreme event exposure multiplication factors by birth year under a range of global warming trajectories relative to someone living in the preindustrial (PI) period.[13]

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.

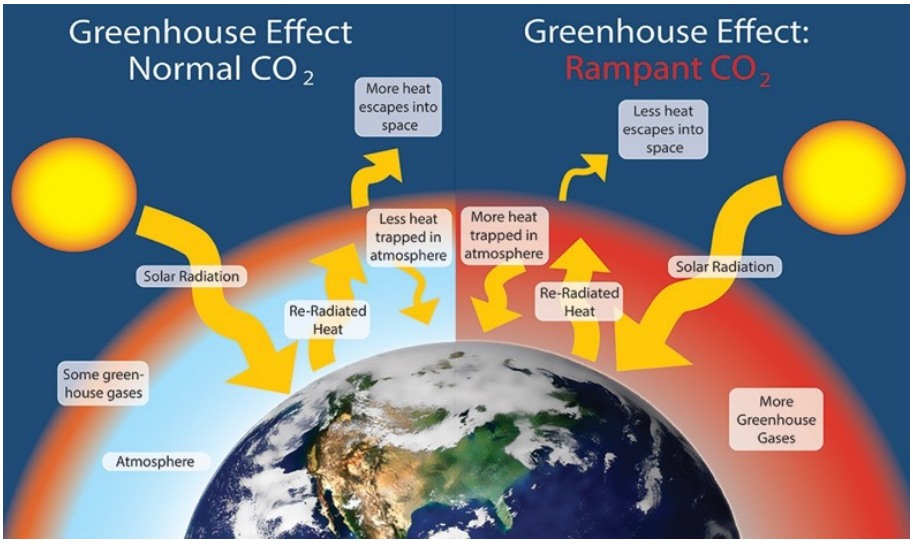

Figure 10: While GHGs, like CO_2, normally trap some of the sun's heat, which prevents the planet from freezing (left side), with increasing atmospheric concentrations of GHGs, the planet is now experiencing an energy imbalance and is warming at an unprecedented rate (right side).

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.

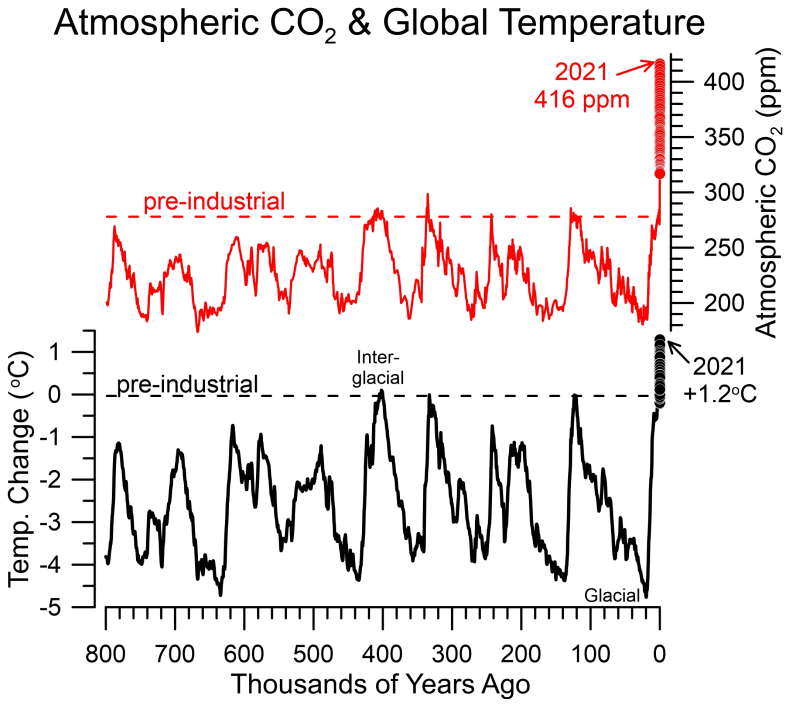

Figure 11: Correlation of atmospheric concentrations of CO_2 and global temperature change from pre-industrial temperatures for the last 800,000 years.[14]

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/.

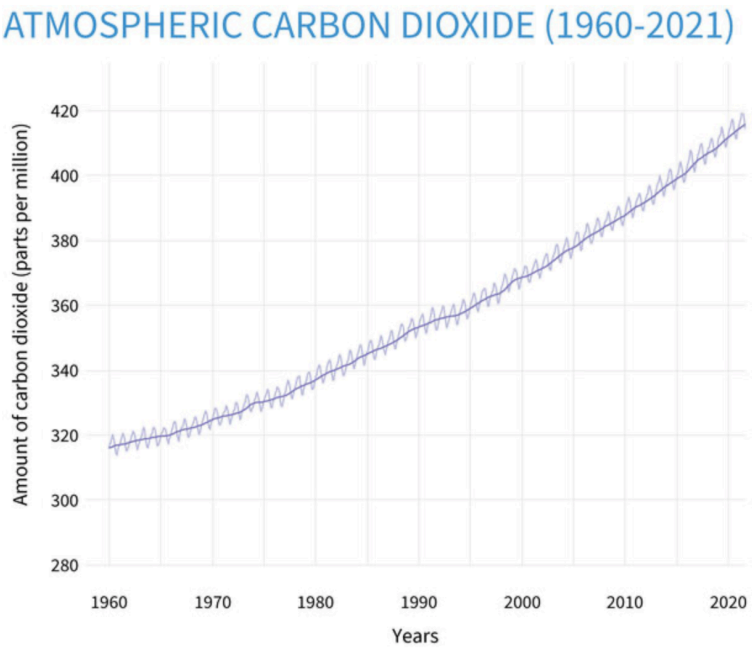

Figure 12: Atmospheric CO_2 at Mauna Loa Observatory. This graph shows the station's monthly average CO_2 measurements since 1960 in parts per million. The seasonal cycle of highs and lows (small peaks and valleys) is driven by summertime growth and winter decay of Northern Hemisphere vegetation.

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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