

January 20, 2023

Supreme Court of Utah
450 South State Street
Salt Lake City, Utah 84111
supremecourt@utcourts.gov

Re: Natalie R., et al. v. State of Utah, et al. – Case No. 20230022-SC

Dear Clerk of the Supreme Court,

In response to the Order entered January 10, 2023, in the above-captioned matter, the youth Appellants hereby request that the Supreme Court retain this appeal.

I. Case Name and Number

The name of the case and appellate case number are as follows:

Natalie R., et al. v. State of Utah, et al., Case No. 20230022-SC

II. Parties, Attorneys, and Firms

The names of the parties and the representing attorneys and firms are as follows:

Appellants: 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. Appellants are represented by Andrew G. Deiss, John Robinson Jr., and Corey D. Riley of Deiss Law PC and Andrew L. Welle, *pro hac vice*, of Our Children’s Trust.

Appellees: State of Utah; Spencer Cox, in his official capacity as the 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 Department of Natural Resources, Office of Energy Development; the Department of Natural Resources, Board of Oil, Gas, and Mining; the Department of Natural Resources, Division of Oil, Gas, and Mining; and John R. Baza, in his official capacity as the Director of the Department of Natural Resources, Division of Oil, Gas, and Mining. Appellees are represented by Erin T. Middleton, David N. Wolf, and Jeffrey B. Teichert, Assistant Utah Attorneys General.

III. Issues on Appeal

This is an appeal of a judgment dismissing the entirety of the case as to all parties, with prejudice, entered on December 2, 2022, in *Natalie R., et al. v. State of Utah, et al.*, Case No. 220901658. Youth Appellants' Complaint challenges as unconstitutional five statutory sections¹ that direct Appellees to maximize, promote, and systematically authorize fossil fuel development in Utah. The youth allege that these statutes, and Appellees' conduct in implementing them, have caused and continue to cause dangerous air pollution and climate change in Utah, taking years off youth Appellants' lives and substantially endangering their health and safety today, violating their rights to life and liberty under Utah's Constitution. Appellants seek declaratory relief that the laws, and Appellees' conduct in implementing them, are unconstitutional. The Third Judicial District Court, Honorable Robert Faust, granted Appellants' motion to dismiss, ruling that the youth's constitutional claims presented a nonjusticiable political question, that declaratory relief would provide no redress, and that Utah's due process clause does not apply to fossil fuels. The issues presented on appeal include the following:

- 1.) Is deciding the constitutionality of statutes governing fossil fuel development a nonjusticiable political question?
- 2.) Can there be no possible set of facts under which fossil fuel policies can conceivably infringe the rights to life, liberty, and property under Utah's due process clause?
- 3.) Can a declaration of the unconstitutionality of a statute, without further relief, provide meaningful redress?

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

IV. Reasons Supporting Retention

This appeal should be retained by this Court because it involves important constitutional questions of first impression. Determining whether youth Appellants will be afforded their day in court to present evidence on their constitutional claims requires resolution of questions regarding the role and powers of Utah's courts under Article V, section 1; the scope of Utah's due process clause; and the sufficiency of declaratory relief to provide meaningful redress. This appeal also presents an opportunity for this Court to resolve confusion regarding the legal standard for determining the presence of a nonjusticiable political question under Utah's Constitution.

A. This Case Presents Important Questions Regarding the Proper Interpretation of Constitutional Provisions Likely to Affect Future Cases

This Court should retain this appeal to resolve important questions under Article V, Section 1 of Utah's Constitution regarding the role of Utah's courts and the justiciability of constitutional challenges to statutes. Whether Utah's courts have the power to determine the constitutionality of laws governing fossil fuel development is a question of first impression and this Court has only addressed the political question doctrine in one previous case. Indeed, prior to the district court's ruling here, Utah's courts have never found a due process claim to implicate a nonjusticiable political question, making this appeal particularly appropriate and consequential in providing guidance to Utah's lower courts.

This appeal also requires resolution of important questions regarding the scope and proper interpretation of Utah's due process clause. In dismissing the youth's claims with prejudice, the district court ruled that "due process does not apply to fossil fuels policy," removing the entire arena of fossil fuel legislation from constitutional review under Utah's due process clause, and foreclosing any conceivable due process claim involving fossil fuels, regardless of the facts involved. This appeal will thus determine not only whether youth Appellants' claims may proceed, but whether there can be *any* possible set of facts involving fossil fuels sufficient to state a claim under Utah's due process clause. More broadly, this appeal presents the important question of whether Utah's district courts may foreclose judicial review of allegedly unconstitutional statutes and exempt entire areas of legislative and executive policies from constitutional review simply because the alleged facts and claims raise issues of first impression. The district court determined that the rights to life and liberty do not apply here because it concluded that

“there is no precedent” for applying due process to statutes governing fossil fuel development. By retaining this appeal, this Court can clarify whether Utah’s due process rights apply to new circumstances and legislative subjects not previously addressed by Utah’s Courts, including the State’s enacted fossil fuel policies.

Retention is also appropriate for this Court to clarify whether declaratory relief, standing alone, can provide meaningful redress for constitutional violations. Relatedly, it presents important questions regarding the proper interpretation of the statutes youth Appellants challenge. Without a fully developed factual record regarding Appellees’ implementation of the challenged statutory sections, and in direct contradiction to Appellants’ factual allegations, the district court ruled that declaring the challenged statutes unconstitutional would provide no redress, concluding that the youth did not challenge operative sections of Utah’s statutory code. Retaining this appeal would thus be appropriate to resolve important questions regarding the proper interpretation of the legal effect of statutory policy directives such as those at issue here and whether declarations of their unconstitutionality can ever provide meaningful redress. The district court further concluded that, even if the challenged statutes were declared unconstitutional, it would provide no redress in the absence of further, comprehensive injunctive relief. The ruling is particularly remarkable because Appellees did not contest the injury or causation components of standing, nor the sufficiency of the allegations demonstrating that their conduct implementing the statutes is causing and contributing to the youth’s injuries. This appeal thus raises the additional question of constitutional import of whether declaring any statute unconstitutional, without further relief, can ever provide sufficient redress.

B. This Case Provides an Opportunity to Resolve Confusion in a Legal Standard Set Forth in Prior Utah Appellate Cases

Retention is further appropriate because this case provides an opportunity to resolve confusion regarding the applicability in Utah’s courts of the test federal courts apply to determine the presence of a nonjusticiable political question under *Baker v. Carr*, 369 U.S. 186 (1962). The Utah Court of Appeals discussed the *Baker* factors in *Skokos v. Corradini*, applied one of them, and stated that “the political question doctrine, along the lines suggested by” federal courts “is equally applicable in Utah’s courts[.]” 900 P.2d 539, 541 (Utah Ct. App. 1995). However, subsequent to *Skokos*, this Court decided *Matter of Childers-Gray*, 2021 UT 13, 487 P.3d 96, the only case in which this Court has so much as referenced any of the *Baker* factors. In determining whether *Childers-Gray*

presented a political question, this Court did not explicitly adopt, analyze, or apply any of the *Baker* factors. Instead, it conducted a simultaneous and undifferentiated analysis of whether adjudicating the case would violate Utah's separation of powers under Article V, Section 1 of Utah's Constitution, resulting in confusion as to whether the *Baker* factors, or some other standard, apply in Utah's courts. Since the district court ruled that Youth Appellants' claims present a nonjusticiable political question under *Baker*, and relied exclusively on out-of-state precedent in analyzing the *Baker* factors, this case presents an opportunity to resolve the confusion as to the legal standard for identifying nonjusticiable political questions in Utah's courts.

For the foregoing reasons, Youth Appellants respectfully request that this Court retain this appeal.

The Checklist for Appellate Jurisdiction is attached hereto as Appendix A.

Respectfully submitted this 20th day of January 2023,

/s/ Andrew L. Welle
Andrew L. Welle, *pro hac vice*
OUR CHILDREN'S TRUST

Andrew G. Deiss (7184)
John Robinson Jr. (15247)
Corey D. Riley (16935)
DEISS LAW PC

Attorneys for Youth Appellants

APPENDIX A

Checklist for Appellate Jurisdiction

[Attached]

Checklist for Appellate Jurisdiction

*(If a request for retention is submitted, this form **must** be returned with that request and **must** provide all applicable information or the request for retention will **not** be considered by the Court. Any additional information relevant to jurisdiction may be included in the letter requesting retention)*

The case number in the lower court 220901658

The date the final judgment was entered or, if the time for appeal was reinstated pursuant to Subparts (f) or (g) of Rule 4 of the Rules of Appellate Procedure, the date of reinstatement December 2, 2022

Whether the trial court entered a "separate document" as required by Rule 58A(a) of the Rules of Civil Procedure: Yes No Not Applicable .

The date of entry of that document December 2, 2022

The date of the filing of the appeal to which this retention request is directed January 3, 2023

Whether any other appeals or cross-appeals in the same case have been filed: Yes No .

The date(s) of those appeal(s) _____, _____, _____

Whether the judgment listed above resolved the case as to all claims and parties: Yes No

If no, whether the judgment was certified as final pursuant to Rule 54(b) of the Rules of Civil Procedure: Yes No . List the date of certification _____

Whether the judgment listed above included a ruling concerning attorney fees: Yes No

If attorney fees were awarded at any time, whether the amounts of all awards of fees were fixed prior to the date of your latest appeal: Yes No Not Applicable . List the date of the last order fixing the fees: _____

Whether Rule 4(b) of the Rules of Appellate Procedure is applicable: Yes No

If yes, list the date of any motion listed in Rule 4(b) _____ and the date of resolution of that motion _____

Whether Rule 4(c) of the Rules of Appellate Procedure is applicable: Yes No

Whether the time to file the appeal was extended: Yes No . List the date of any motion for an extension _____ and the date of the order extending the time _____

Whether the appeal was filed pursuant to Utah Code § 78B-11-129: Yes No . If yes, list the subsection(s) of that provision that is (are) applicable: _____, _____, _____

The statutory provision conferring appellate jurisdiction on this Court — ie., the applicable subsection of Utah Code § 78A-3-102 (3(j))

CERTIFICATE OF SERVICE

I certify that on this 20th day of January, 2023, I caused to be served via email a true and correct copy of the foregoing **Retention Letter** and **Checklist for Appellate Jurisdiction** to the following at the email addresses listed below:

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/s/ Andrew L. Welle