Austin Knudsen
Montana Attorney General
Michael D. Russell
Assistant Attorney General
MONTANA DEPARTMENT OF JUSTICE
PO Box 201401
Helena, MT 59620-1401
Phone: 406-444-2026
michael.russell@mt.gov

Emily Jones
Special Assistant Attorney General
JONES LAW FIRM, PLLC
115 N. Broadway, Suite 410
Billings, MT 59101
Phone: 406-384-7990
emily@joneslawmt.com

Mark L. Stermitz
CROWLEY FLECK PLLP
305 S. 4th Street E., Suite 100
Missoula, MT 59801-2701
Phone: 406-523-3600
mstermitz@crowleyfleck.com

Selena Z. Sauer
CROWLEY FLECK PLLP
PO Box 759
Kalispell MT 59903-0759
Phone: 406-752-6644
ssauer@crowleyfleck.com

Attorneys for State of Montana

MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

RIKKI HELD, et al., Plaintiffs, v. STATE OF MONTANA, et al., Defendants.	Cause No.: CDV-2020-307 Hon. Kathy Seeley **BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO PARTIALLY DISMISS FOR MOOTNESS**

INTRODUCTION

Plaintiffs' claims in this matter stem from their challenges to two statutes: Section 90-4-1001, MCA (the "State Energy Policy Goal Statements") and Section 75-1-201(2)(a), MCA (the

"MEPA Limitation"). (*See* Compl., *generally*.) On March 16, 2023, H.B. 170 became law with Governor Gianforte's signature, repealing the State Energy Policy Goal Statements, effective immediately.[1] All of Plaintiffs' requests for relief that are predicated on their constitutional challenge to the State Energy Policy Goal Statements are therefore moot, as that statute has been repealed and no longer exists. This includes Plaintiffs' request for the Court to declare that the State Energy Policy Goal Statements facially violate the Montana Constitution, as well as their request for the Court to enjoin Defendants from subjecting them to that statute by enjoining Defendants' so-called "aggregate acts" allegedly taken pursuant to that statute, among other related relief. (*See* Compl., at 102–103.) Because these claims are now moot, there is no longer any live controversy for the Court to resolve with respect to the State Energy Policy Goal Statements, and the Court should dismiss the same as explained further below.

ARGUMENT

I. Plaintiffs' Claims Based on Section 90-4-1001 Are Moot.

It is axiomatic that the authority of Montana courts is limited to justiciable controversies, "upon which a court's judgment will effectively operate, as distinguished from a dispute invoking a purely political, administrative, philosophical, or academic conclusion." *Wilkie v. Hartford Underwriters Ins. Co.*, 2021 MT 221, ¶ 7, 405 Mont. 259, 263, 494 P.3d 892, 895 (quoting *Progressive Direct Ins. Co. v. Stuivenga*, 2012 MT 75, ¶ 16, 364 Mont. 390, 276 P.3d 867); *Greater Missoula Area Fed'n of Early Childhood Educators v. Child Start Inc.*, 2009 MT 362, ¶ 22, 353 Mont. 201, 219 P.3d 881). A justiciable controversy requires that a "case or controversy" exist throughout the entire matter for a court to retain jurisdiction. *Id.* ¶ 23 (clarifying "because the

[1] *See* the Montana Legislature Detailed Bill Information for H.B. 170 available at http://laws.leg.mt.gov/legprd/LAW0203W$BSRV.ActionQuery?P_SESS=20231&P_BLTP_BILL_TYP_CD=HB&P_BILL_NO=170&P_BILL_DFT_NO=&P_CHPT_NO=&Z_ACTION=Find&P_ENTY_ID_SEQ2=&P_SBJT_SBJ_CD=&P_ENTY_ID_SEQ=Page (mt.gov)

constitutional requirement of a 'case or controversy' contemplates real controversies and not abstract differences of opinion ***or moot questions***,...courts lack jurisdiction to decide moot issues insofar as an actual 'case or controversy' no longer exists") (emphasis added). A case becomes moot if the disputed issue has ceased to exist or is no longer live. *Wilkie* at ¶ 8 (internal quotations omitted). "Any further ruling in such a case would constitute an impermissible advisory opinion, 'i.e., one advising what the law would be upon a hypothetical state of facts or upon an abstract proposition, not one resolving an actual case or controversy.'" *Id.* (*quoting Plan Helena, Inc. v. Helena Reg'l Airport Auth. Bd.*, 2010 MT 26, ¶ 12, 355 Mont. 142, 226 P.3d 567).

The doctrine of mootness is not aspirational or merely theoretical – it is a jurisdictional limitation on the authority of the Court to unnecessarily expend its resources on a hypothetical question. The Montana Supreme Court recently emphasized this point:

> [C]ourts have no jurisdiction to determine matters purely speculative, enter anticipatory judgments, declare social status, deal with theoretical problems, give advisory opinions, answer moot questions, adjudicate academic matters, provide for contingencies which may hereafter arise, or give abstract opinions. The Uniform Declaratory Judgment Act does not license litigants to fish in judicial ponds for legal advice. Consequently, this Court has refused to entertain a declaratory judgment action on the ground that no controversy is pending which the judgment would affect.

Broad Reach Power, LLC v. Mont. Dept. of Pub. Serv. Regulation, Pub, Serv. Commn., 2022 MT 227, ¶ 10, 410 Mont. 450, 520 P.3d 301 (internal quotations and citations omitted).

Here, the Montana Legislature's repeal of the State Energy Policy Goal Statements renders moot any portion of Plaintiffs' claims that implicate or rest on the now-repealed statute. This includes but is not limited to Plaintiffs' claims that Section 90-4-1001(c)—(g) is unconstitutional (*See e.g.* Compl. at 38:1-44:3, 93:19-22, 101:3-11, 102:19-20), and Plaintiffs' claims based on Defendants' "aggregate acts" allegedly taken pursuant to the State Energy Policy Goal Statements (*See e.g.* Compl. at 38:1-44:3, 102:13-18, 192:11-18). In other words, no judgment from this Court

would affect the controversy surrounding the constitutionality of the State Energy Policy Goal Statements and Plaintiffs' related claims because that statute no longer exists.[2] The Court should accordingly dismiss those claims as moot. *See Wetzel v. Montana Dep't of Revenue*, 180 Mont. 123, 123, 589 P.2d 162, 163 (Mont. 1979) (dismissing appeal as moot following Montana Legislature's repeal of the statute forming the basis of the trial court's order).

II. Good Cause Exists for Filing This Motion After the Pretrial Motions Deadline.

Although the Court's current Scheduling Order (Doc. 145) set February 1, 2023 as the deadline for the parties to file pretrial motions in this case, the circumstances establish good cause for the Court to nonetheless consider this Motion. *See* Mont. R. Civ. P. 16(b)(4) (providing for modification of a schedule for good cause). "Good cause is generally defined as a 'legally sufficient reason' and referred to as 'the burden placed on a litigant (usu. by court rule or order) to show why a request should be granted or an action excused.'" *Brookins v. Mote*, 2012 MT 283, ¶ 29, 367 Mont. 193, 292 P.3d 347 (internal citation omitted). "'[G]ood cause' is a flexible standard, and whether it is present 'will necessarily depend upon the totality of the facts and circumstances of a particular case.'" *Id.* (internal citation omitted).

Here, the event giving rise to this Motion—the repeal of the State Energy Policy Goal Statements—did not occur until March 16, 2023, a month and a half after the applicable deadline. Plaintiffs' claims based on that statute did not become moot until the date the statute was repealed, and Defendants had no control over the timing of that event. Good cause therefore exists for the Court to consider this Motion and dismiss Plaintiffs' affected claims in the interest of judicial efficiency.

[2] This is in addition to and notwithstanding Plaintiffs' failure to establish redressability with respect to the State Energy Policy Goal Statements. *See* Defendants' Brief in Support of Motion for Summary Judgment, at 6-9; Defendant's Reply Brief in Support of Motion for Summary Judgment, at 7-9.

CONCLUSION

As explained above, all of Plaintiffs' claims predicated on the now-repealed State Energy Policy Goal Statements are now moot. The Montana Legislature's repeal of that statute has effectively terminated any justiciable controversy regarding the same. Defendants therefore respectfully request that the Court enter an order dismissing all claims or portions of claims that implicate or rely on the recently repealed State Energy Policy Goal Statements.

Dated this 31st day of March, 2023.

Austin Knudsen
MONTANA ATTORNEY GENERAL

Michael Russell
Assistant Attorney General
PO Box 201401
Helena, MT 59620-1401
michael.russell@mt.gov

Emily Jones
Special Assistant Attorney General
JONES LAW FIRM, PLLC
115 N. Broadway, Suite 410
Billings, MT 59101
emily@joneslawmt.com

Mark L. Stermitz
CROWLEY FLECK, PLLP
305 S. 4th Street E., Suite 100
Missoula, MT 59801-2701
mstermitz@crowleyfleck.com

Selena Z. Sauer
CROWLEY FLECK PLLP
PO Box 759
Kalispell, MT 59903-0759
ssauer@crowleyfleck.com

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify a true and correct copy of the foregoing was delivered by email to the following:

Roger M. Sullivan
Dustin A. Leftridge
rsullivan@mcgarveylaw.com
dleftridge@mcgarveylaw.com
ktorbeck@mcgarveylaw.com

Melissa A. Hornbein
Barbara Chillcott
hornbein@westernlaw.org
chillcott@westernlaw.org

Philip L. Gregory (pro hac vice)
pgregory@gregorylawgroup.com

Nathan Bellinger (pro hac vice)
Andrea Rodgers (pro hac vice)
Julia Olson (pro hac vice)
nate@ourchildrenstrust.org
andrea@ourchildrenstrust.org
julia@ourchildrenstruct.org

Date: March 31, 2023

Nikki Schnackenberg