

IN THE SUPREME COURT
OF THE STATE OF MONTANA

Supreme Court No. **OP-11-0258**

KIP BARHAUGH; TIMOTHY BECHTOLD as natural parent and on behalf of S.B. and B.B.; RYAN BUSSE as natural parent and on behalf of S.B. and B.B.; GRADEN OEHLERICH HAHN and JAMUL F. HAHN as natural parents and on behalf of A.H. and A.H.; EMILY HOWELL; LARRY HOWELL as natural parent and on behalf of S.H.; MAYLINN SMITH as natural parent and on behalf of W.F. and M.F.; and JOHN THIEBES,

Petitioners,

vs.

THE STATE OF MONTANA

Respondent,

MOTION TO INTERVENE

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MOTION

Intervenors, Climate Physics Institute, a Montana non-profit association; Western Montana Fish and Game Association, Inc., a Montana non-profit association; Representative Krayton Kerns; Senator Jason Priest; Representative Champ Edmunds; Representative Mike Miller; Representative Cary Smith; Representative Jerry O'Neil; Representative James Knox; Representative Tom Burnett; Representative Keith Regier; Representative Dan Skattum; Representative Alan Hale; Representative Matt Rosendale; Representative Dan Salomon; Representative Lee Randall; Senator Greg Hinkle; Senator Joe Balyeat; Senator Verdell Jackson; Senator Ed Walker; Senator Chas Vincent; Senator Bruce Tutvedt; Representative Joe Reid; and Representative Mike Cuff, all Montana legislators, residents and citizens, as well those listed in Exhibit A, apply for leave to join this action because they each claim an interest relating to the issue which is the subject of the action; are so situated that the disposition of the action may as a practical matter impair or impede

their ability to protect that interest; and the applicants' interest is inadequately represented by existing parties.

Petitioners and the Respondent were asked for consent to the Motion to Intervene. Both respectfully declined.

Pursuant to MONT. R. CIV. P. 24(c), Intervenors attach hereto a proposed Answer to the Petition for Original Jurisdiction. The Motion is supported by the following:

BRIEF

PROCEDURAL POSTURE

In this case, Petitioners, certain “Montana children of diverse backgrounds,” have filed a petition for original jurisdiction in the Montana Supreme Court. They seek a judgment declaring that the State of Montana has “an affirmative duty” to “enforce limitations on the levels of greenhouse gas emissions as necessary to mitigate human caused climate change.” (*Petition*, 1.) Petitioners claim they seek relief specifically against Montana’s “legislative” branch. (*Id.*, 2.)

The facts of the petition are presented as if a record has been made in a trial court, after complete pretrial proceedings and discovery, establishing an absence of any contested evidence. Of course, no such

proceedings have been had, and there is no “consensus” that human activity is effecting the world’s historically-ever-changing climate.¹

<http://www.climatechangeinfo.com/>

Still, Petitioners insist that “[t]he questions of whether the atmosphere is part of the constitutionally protected public trust in Montana, and subsequently, whether the State of Montana has an affirmative obligation to protect that trust resource, including regulation of GHG emissions, are purely legal issues, appropriate for resolution in this proceeding.” (*Id.*, 5.) Petitioners ask the Court to impose on the public the monumental cost of curtailing human-caused carbon gas emissions in order to arrest changes in the global

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<http://www.climatedepot.com/a/9035/SPECIAL-REPORT-More-Than-1000-International-Scientists-Dissent-Over-ManMade-Global-Warming-Claims--Challenge-UN-IPCC--Gore;>

http://www.heartland.org/custom/semod_policybot/pdf/22835.pdf

<http://www.populartechnology.net/2010/09/prominent-climatologists-skeptical-of.html>

http://hw.libsyn.com/p/b/f/6/bf663fd2376ffeca/2010_Senate_Minority_Report.pdf?sid=c018a076761574be8289e542f017ef0f&l_sid=27695&l_eid=&l_mid=2336201

<http://climateclash.com/2011/02/04/h4-the-battle-of-the-scientists/>

atmosphere. Thus, Petitioners argue, since the “political branches” of State government – those most directly responsive to the people – have not been persuaded that such real-world costs are worth their speculative benefits, the judicial branch must intercede and impose the will of a minority. (*Id.*, 8.)

ARGUMENT

A motion to intervene as a matter of right must satisfy each of the following factors: (1) be timely; (2) show an interest in the subject matter of the action; (3) show that the protection of the interest may be impaired by the disposition of the action; and (4) show that the interest is not adequately represented by an existing party. *Sportsmen for I-143 v. Montana Fifteenth Judicial Dist. Court*, Sheridan County, 2002 MT 18, ¶ 7, 308 Mont. 189, 40 P.3d 400. “Montana’s rule is essentially identical to the federal rule which is interpreted *liberally*.” *Id.* (Emphasis added).

In this case, the motion is timely. Moreover, Intervenors have at least an equal interest in the subject matter of the case as do Petitioners. Petitioners claim standing “because their personal and economic well-being” is at stake.” (*Petition*, 1.) So too are

Intervenors' own interests, both as citizens and as legislators. If the Court declares the State has a duty to stop carbon gas emissions to protect the world's atmosphere, there will be devastating results for the State's economy. Intervenors' livelihoods, as well as other environmental and stewardship values into which they invest their finite personal resources, will suffer. The reduction in economic activity due to carbon restrictions will also impair State tax revenue, and leave the "political branches" less able to husband the many other natural resources with which Montana is so abundantly blessed.

Third, Intervenors' interests will be impaired by a disposition of this action adverse to the State. If the Court grants the Petition, and holds that carbon gases must be regulated sufficiently to "mitigate human caused climate change," then Intervenors' interests in values other than the global climate will suffer. Moreover, Intervenors have an interest in the political compromises represented in the *status quo*. Petitioners seek to void these political compromises and effectively "veto" the will of the electorate, as expressed by the legislative and executive branches of State government. Before the Court decides whether to invalidate that compromise, or to substitute its own

judgment, it ought to allow the political actors and their constituents who participated in the compromise to appear and, at least, have some say in an action which seeks to destroy it.

Finally, the State will not adequately represent Intervenors' interests. Most of the facts claimed to be undisputed in the Petition are admissions made by the Executive Branch. (*Petition*, pp. 3-5, 7, 16.) Attorney General Bullock is himself an advocate for the very relief sought by Petitioners. During the political campaign, General Bullock used TerraPass to purchase offsets for carbon emissions from his campaign travel.² As his press release states: Steve Bullock "understands the importance of a healthy environment is the proud new owner of a TerraPass."³ The press release embellishes this:

"Getting to every county in a state as big as Montana means putting some miles in on the road," Bullock continued. "The impact of all that driving is more than just sore eyes and an aching back. That's why I decided to offset my carbon emissions for this campaign by purchasing a TerraPass," Bullock said."

"This is a small gesture, but it's an important one. We all need to do our part to be good stewards of the natural

² <http://www.stevebullock.com/pressarchives/>

³ *Id.*

heritage that is so much a part of who we are as Montanans,” Bullock continued. “Every day the Attorney General and his colleagues on the Land Board look at issues that impact our natural heritage. If I’m elected, I’ll work to protect that heritage for future generations,” Bullock concluded.”⁴

Elsewhere, in a campaign white paper, General Bullock also solemnly promised to “use the Attorney General’s authority to protect and promote the constitutional promise of a clean and healthful environment.”⁵ In other words, if he abides by the promises he made in his campaign, General Bullock can only consent to the relief requested in the Petition.

In view of the liberal policy in favor of intervention, *Sportsmen for I-143*, ¶ 7, Intervenors satisfy fully all four criteria for intervention as of right: they have filed timely; they have an interest; their interest is in jeopardy; and there is no party who has promised to fight for their rights. The Court should therefore allow them to intervene, to allow them to file the attached answer, and a reasonable amount of

⁴ *Id.*

⁵ http://www.stevebullock.com/White_Papers/Public_Access.pdf

additional time sufficiently to gather evidence and marshal arguments in opposition to the thoroughly prepared Petition.

CONCLUSION

Accordingly, Intervenors ask that their motion be granted, and that they be allowed to appear and be heard in opposition to the pending Petition.

Dated this 3rd day of June, 2011.

Respectfully Submitted,
SULLIVAN, TABARACCI & RHOADES, P.C.

By: _____
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For the Intervenors

**CERTIFICATE OF COMPLIANCE
WITH TYPE-VOLUME LIMITATION, TYPEFACE
REQUIREMENTS, AND TYPE STYLE REQUIREMENTS**

1. This brief complies with the type-volume limitation of MONT. R. APP. P. 11(4)(a) because, according to the word count function of WordPerfect X3, this brief contains 1,250 and no more than 138 per page, excluding the parts of the brief exempted by MONT. R. APP. P. 11(4)(c).

2. This brief complies with the typeface and the type style requirements of MONT. R. APP. P. 11(2) because this brief is prepared in a proportionally spaced typeface using WordPerfect X3 Century Font type and a 14 point font size.

DATED this 3rd day of June, 2011.

Respectfully Submitted,
SULLIVAN, TABARACCI & RHOADES, P.C.

By: _____
Quentin M. Rhoades
Robert Erickson
For the Intervenors

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of June, 2011, I filed the foregoing with the Clerk of the Montana Supreme Court; and that I have served true and accurate copies of same upon each attorney of record, and each party not represented by an attorney in the above-referenced action as follows:

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