



*Constitutional Climate Justice in
Alaska's Courts: Past, Present, and
Future*

Alaska Tribal Resilience Learning Network

January 16, 2024

Andrew Welle

Senior Staff Attorney, Our Children's Trust

*Climate
Lawyers for
Youth
since 2010*

We advocate for and elevate the voices of diverse *Youth* and *Future Generations* for climate rights

We advocate for *science-based* & legally enforceable *systemic remedies against governments* in court

We protect fundamental *human rights*



**Our Children's
Trust** Youth v. Gov

Climate Lawyers for Youth Since 2010

- Only law firm on the planet that exclusively represents and advocates on behalf of children to protect their right to a stable climate
- Started rights-based youth climate movement 14 years ago
- Track-record of paradigm shift in law and proven legal strategy
- Historic win in *Held v. State of Montana*
- 3 cases on track for trials in 2024 and 2025
- New youth-led case in Alaska will be filed in early 2024



**Our Children's
Trust** Youth v. Gov

Climate Lawyers for Youth since 2010

Our Children's Trust: Climate Litigation Around the Globe

Domestic

Federal • *Juliana v. United States*
• *Genesis B. v. U.S. E.P.A.*

States • *Held v. State of Montana*
• *Layla H. v. Commonwealth of Virginia*
• *Natalie R. v. State of Utah*
• *Navahine v. Hawaii Department of
Transportation*

Foreign

Canada, Mexico, India, U.K., etc.

Juliana v. United States



***Juliana v. United States* Plaintiffs in 2022 together with their attorneys Julia Olson, Andrea Rodgers, and Phil Gregory.**

The YOUTHS' INJURIES as Recognized by the Ninth Circuit

Exacerbated
medical
conditions

Damage
to property

Psychological
harm

Cultural harms

“These injuries are not simply ‘conjectural’ or ‘hypothetical;’ at least some of the plaintiffs have presented evidence that climate change is affecting them now in concrete ways and will continue to do so unless checked.”



Youth Plaintiff Spotlight: Jaime B.

Jaime is **Dine'** and grew up on the Navajo Nation Reservation, in Cameron, Arizona, but had to move to Flagstaff because of water scarcity.

Climate Crisis Impacts

- Worries her extended family, all of whom live on the Reservation, will also be displaced from their land, which will erode her culture and way of life.
- “Participating in sacred Navajo ceremonies on the Reservation is an important part of Jaime’s life, and climate impacts . . . are starting to harm the ability for Jamie and her tribe to participate in their traditional ceremonies.”
- “In 2014, Jaime and her Mother were evacuated from their home for two days because of the Oak Creek Canyon fire north of their property.”
- “Jaime’s severe allergies have become increasingly worse over the last several years.”
- Ninth Circuit recognized Jaime’s injuries as conferring standing.





The Ninth Circuit on the Federal Government's Causation of Youth Plaintiffs' Injuries

“A substantial evidentiary record documents that the federal government has long promoted fossil fuel use despite knowing that it can cause catastrophic climate change, and that failure to change existing policy may hasten an environmental apocalypse.”



A Children's Case

Right to Life

Liberty

Security

Equal Protection of the
Law

Public Trust Resources

- Air
- Water
- Ocean
- Shorelines



U.S. District Court Judge Aiken Order Denying Motion to Dismiss December 29, 2023

“Where a complaint alleges governmental action is affirmatively and substantially damaging the climate system in a way that will cause human deaths, shorten human lifespans, result in widespread damage to property, threaten human food sources, and dramatically alter the planet's ecosystem, it states a claim for a due process violation.”



*U.S. District Court Judge Aiken
Order Denying Motions to Dismiss*

“I have no doubt that the right to a climate system capable of sustaining human life is fundamental to a free and ordered society”



The power of judicial relief to prevent worsening climate change

Judge Aiken: “Here, plaintiffs seek declaratory relief that “the United States’ national energy system that creates the harmful conditions described herein has violated and continues to violate the Fifth Amendment of the U.S. Constitution and Plaintiffs’ constitutional rights to substantive due process and equal protection of the law.” (Doc. 514-1 ¶ 1). This relief is squarely within the constitutional and statutory power of Article III courts to grant. Such relief would at least partially, and perhaps wholly, redress plaintiffs’ ongoing injuries caused by federal defendants’ ongoing policies and practices.”

What's Next in Juliana?





*Held v. State of
Montana*

June 12 – 20, 2023

Helena, Montana

Named Plaintiff, Rikki Held, with one of her attorneys Nate Bellinger.



MT Fossil Fuel Energy System



Coal mines



Pipelines



Oil and gas extraction



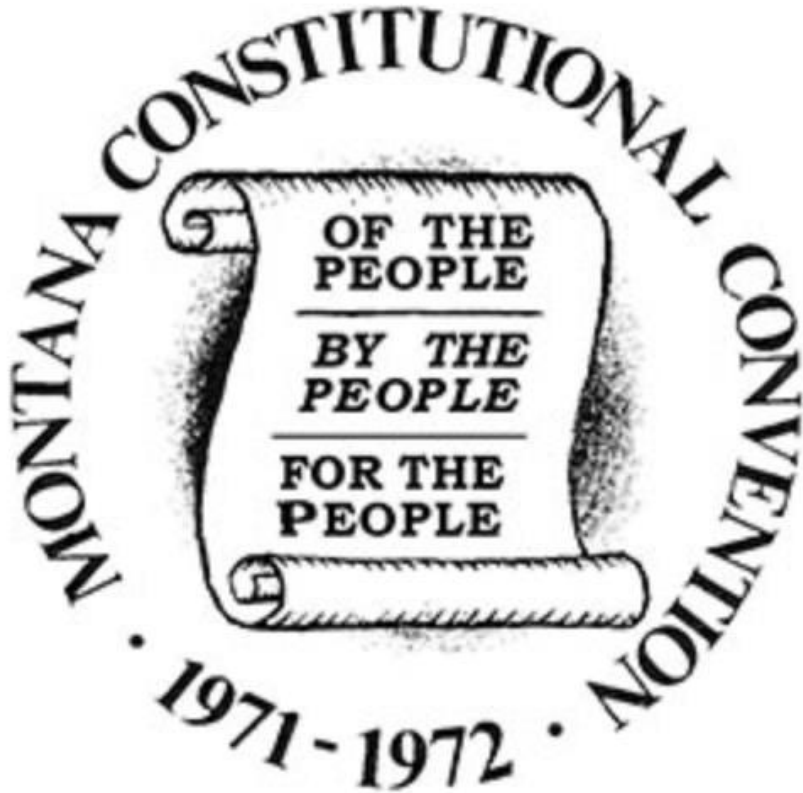
Coal and gas power plants

Montana State Energy
Policy:
90-4-1001(c)-(g)

Climate Change
Exception to MEPA:
75-1-201(2)(a)

Systemic permitting
fossil fuel activities

Montana's Constitution



- **Right to a clean and healthful environment**
 - Article II, Section 3 & Article IX, Section 1
- **Right to individual dignity and equal protection of the laws**
 - Article II, Section 4
- **Right to safety, health, life, liberty, and property**
 - Article II, Sections 3 & 17
- **Those under 18 enjoy all the same fundamental rights**
 - Article II, Section 15

Plaintiffs Testify



Youth Plaintiff Spotlight: Sariel

Member of the Confederated Salish and Kootenai Tribes and lives on the Flathead Indian Reservation

The Climate Crisis...

- Threatens her right to learn traditional, cultural, and spiritual practices so that she might carry them on.
- Progressively decreases snowfall, affecting the annual telling of Coyote and Creation stories, which can only be told when snow is on the ground.
- Disrupts winter snowpack, creating low water levels which impact her community's ability to fish bull and rainbow trout.
- Affects wild game that Sariel's family hunts on the Reservation, including bison, a central part of her Salish and Kootenai cultural heritage and a critical food source that Sariel and her community rely on for the rest of the year.
- Pushes the huckleberry picking season later into the year due to fluctuating and extreme temperatures, producing smaller yields, causing Sariel's family to travel farther to pick huckleberries.





 **Our Children's Trust** Youth v. Govt



Expert Spotlight: Michael Durglo (Standing Grizzly Bear)

- Head of the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation's Tribal Preservation Department; Chairman of Tribes' Climate Change Advisory Committee
- Testified on the spiritual, traditional, and cultural significance of the natural environment and resources on the Reservation and how climate change threatens the traditions, culture, and spiritual values of members of the Tribes, in particular of Tribal youth, by directly contributing to the increased severity of climate change impacts on the Reservation.
- Tribal Council Resolution No. 23-016: “[T]he Tribal Council has determined that impacts from climate change are occurring on the Flathead Reservation; that climate change presents immediate and long-term risks to the health, security and general welfare of the Tribes and its members and to our lands and non-human relatives; and that the effects of climate change have the potential to negatively impact our people, our lands, our relatives, the environment, and the economic, cultural, and social welfare of the Tribal community and resources...”

Findings of Fact, Conclusions of Law, and Order – August 14, 2023

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FILED
AUG 14 2023
ANGEL SPARKS, Clerk of District Court

**MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY**

| | |
|---|--|
| RIKKI HELD, et al., Plaintiff, | Cause No. CDV-2020-307 |
| v. | FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER |
| STATE OF MONTANA, et al., Defendant. | |

PROCEDURAL HISTORY

On March 13, 2020, sixteen Montana youth (collectively Plaintiffs or Youth Plaintiffs) filed a Complaint for Declaratory and Injunctive Relief (Doc. 1) against the State of Montana, the Governor, Montana Department of Environmental Quality, Montana Department of Natural Resources and Conservation, Montana Department of Transportation, and Montana Public Service Commission (collectively Defendants or State). Plaintiffs' Complaint challenged the constitutionality of the State's fossil fuel-based state energy system, which they allege causes and contributes to climate change in violation

405

“I think this is the strongest decision on climate change ever issued by any court.”

Michael Gerrard, director of Columbia Law School's Sabin Center for Climate Change Law.

Plaintiffs Have Proven Injury

Every additional ton of GHG emissions exacerbates Plaintiffs' injuries and risks locking in irreversible climate injuries.

1 107 (1998). However, Plaintiffs' mental health injuries stemming from the
 2 effects of climate change on Montana's environment, feelings like loss, despair,
 3 and anxiety, are cognizable injuries.

4 6. Every additional ton of GHG emissions exacerbates
 5 Plaintiffs' injuries and risks locking in irreversible climate injuries.

6 7. Plaintiffs' injuries will grow increasingly severe and
 7 irreversible without science-based actions to address climate change.

8 8. Plaintiffs have proven that as children and youth, they are
 9 disproportionately harmed by fossil fuel pollution and climate impacts.

10 9. Plaintiffs have proven that they have suffered injuries that
 11 are concrete, particularized, and distinguishable from the public generally.

12 10. Plaintiffs suffer and will continue to suffer injuries due to
 13 the State's statutorily mandated disregard of climate change and GHG emissions
 14 in the MEPA Limitation, and due to SB 557's removal of MEPA's preventative
 15 equitable remedies with Mont. Code Ann. § 75-1-201(6)(a)(ii).

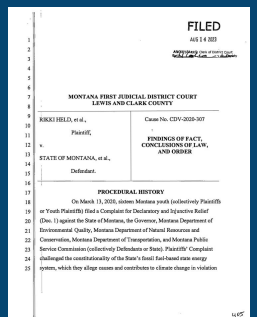
16 **B. Plaintiffs Have Proven Causation at Trial.**

17 11. The PSC is exempted from MEPA as a matter of law. Mont.
 18 Code Ann. § 75-1-201(3).²

19 12. There is a fairly traceable connection between the MEPA
 20 Limitation and the State's allowance of resulting fossil fuel GHG emissions,
 21 which contribute to and exacerbate Plaintiffs' injuries.

22 13. There is a fairly traceable connection between the State's
 23 disregard of GHG emissions and climate change, pursuant to the MEPA
 24 Limitation, GHG emissions over which the State has control, climate change
 25 impacts, and Plaintiffs' proven injuries. Unlike in *Bitterrooters Inc.*, the causal

² Hereinafter, when the Court refers to Defendants or the State, the PSC is excluded.
 Findings of Fact, Conclusions of Law, and Order – page 87
 CDV-2020-307



Plaintiffs Have Proven Injury

Plaintiffs have proven that as children and youth, they are disproportionately harmed by fossil fuel pollution and climate impacts.

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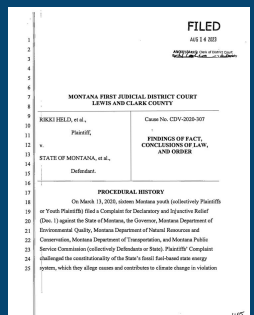
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Findings of Fact, Conclusions of Law, and Order – page 87
CDV-2020-307



Plaintiffs Have Proven Causation

1 relationship between the permitted activities and the resulting environmental
2 harms is reasonably close. *Bitterrooters for Planning, Inc. v. Mont. Dep't of*
3 *Envt. Quality*, 2017 MT 222, ¶ 25, 401 P.3d 712. The State authorizes fossil fuel
4 activities without analyzing GHGs or climate impacts, which result in GHG
5 emissions in Montana and abroad that have caused and continue to exacerbate
6 anthropogenic climate change.

7 14. The Defendants have the authority under the statutes by
8 which they operate to protect Montana's environment and natural resources,
9 protect the health and safety of Montana's youth, and alleviate and avoid climate
10 impacts by limiting fossil fuel activities that occur in Montana when the MEPA
11 analysis shows that those activities are resulting in degradation or other harms
12 which violate the Montana Constitution.

13 15. Montana's contributions to GHG emissions can be measured
14 incrementally and cumulatively both in terms of immediate local effects and by
15 mixing in the atmosphere and contributing to global climate change and an
16 already destabilized climate system.

17 16. Montana's GHG contributions are not *de minimis* but are
18 nationally and globally significant. Montana's GHG emissions cause and
19 contribute to climate change and Plaintiffs' injuries and reduce the opportunity to
20 alleviate Plaintiffs' injuries.

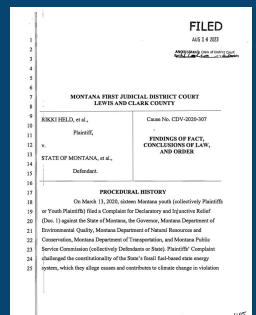
21 C. Plaintiffs Have Proven Redressability at Trial.

22 17. The psychological satisfaction of prevailing in this lawsuit
23 does not establish redressability. *Steel Co.* at 107.

24 18. Defendants can alleviate the harmful environmental effects
25 of Montana's fossil fuel activities through the lawful exercise of their authority if

Montana's GHG contributions are not *de minimis* but are nationally and globally significant.

Montana's GHG emissions cause and contribute to climate change and Plaintiffs' injuries



Plaintiffs Have Proven Redressability

1 they are allowed to consider GHG emissions and climate change during MEPA
 2 review, which would provide the clear information needed to conform their
 3 decision-making to the best science and their constitutional duties and
 4 constraints, and give them the necessary information to deny permits for fossil
 5 fuel activities when inconsistent with protecting Plaintiffs' constitutional rights.
 6 19. Montana's land contains a significant quantity of fossil fuels
 7 yet to be extracted. The State and its agents could consider GHG emissions and
 8 climate impacts and reject projects that would lead to unreasonable degradation
 9 of Montana's environment.

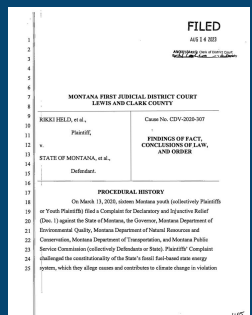
10 20. A reduction in Montana's GHG emissions that results from a
 11 declaration that Montana's MEPA Limitation is unconstitutional would provide
 12 partial redress of Plaintiffs' injuries because the amount of additional GHG
 13 emissions emitted into the climate system today and in the coming decade will
 14 impact the long-term severity of the heating and the severity of Plaintiffs'
 15 injuries.

16 21. It is possible to affect future degradation to Montana's
 17 environment and natural resources and injuries to these Plaintiffs.

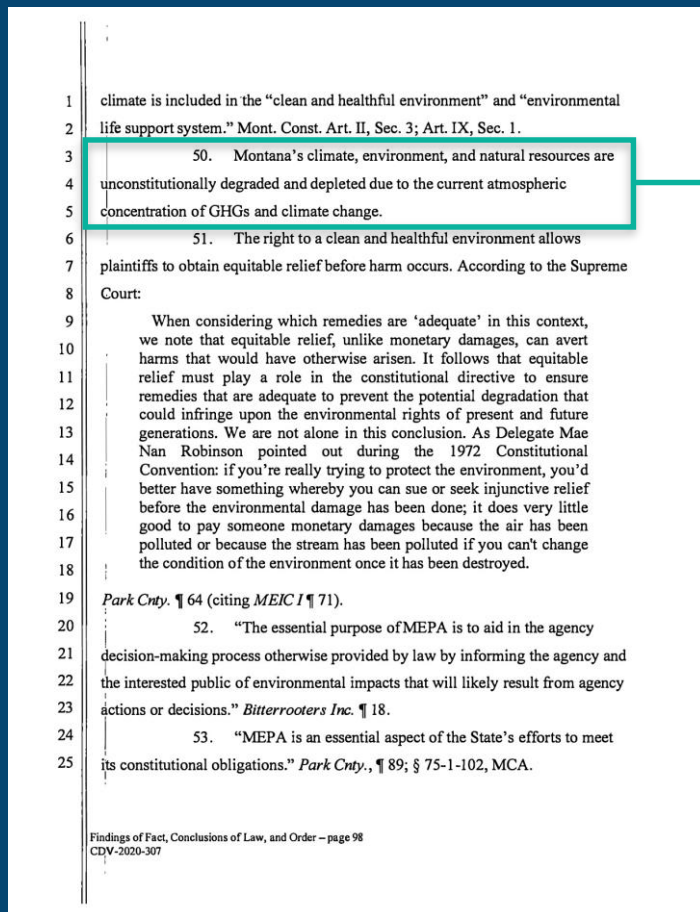
18 22. Permitting statutes give the State and its agents discretion to
 19 deny permits for fossil fuel activities. *See, e.g.*, Mont. Code Ann. §§ 75-2-203
 20 and -204 (discretion under Clean Air Act of Montana to prohibit facilities that
 21 cause air pollution); § 75-2-211(2)(a) (DEQ to provide rules governing
 22 suspension or revocation of air quality permits); § 75-2-218(2) (DEQ has
 23 discretion to deny air quality permits); § 75-2-217(1) (DEQ to provide rules
 24 governing suspension or revocation of operating permits); 75-20-301 (DEQ can
 25 only approve permits for Major Facility Siting Act facilities after considering

Findings of Fact, Conclusions of Law, and Order – page 89
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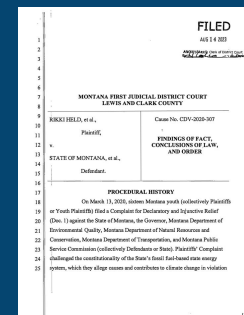
A reduction in Montana's GHG emissions that results from a declaration that Montana's MEPA Limitation is unconstitutional would provide partial redress of Plaintiffs' injuries



Plaintiffs Have Proven Constitutional Violation



- Montana’s climate, environment, and natural resources are unconstitutionally degraded and depleted due to the **current** atmospheric concentration of GHGs and climate change.
- “[T]he MEPA Limitation, § 75- 1-201(2)(a), MCA, and § 75-1-201(6)(a)(ii), MCA, infringe Plaintiffs’ fundamental right to a clean and healthful environment (as well as their fundamental rights to equal protection, dignity, liberty, health and safety, and public trust resource rights stemming from harm to Montana’s environment) and are facially unconstitutional;”



Plaintiffs Win Declaratory and Injunctive Relief

1 5. This judgment will influence the State's conduct by
2 invalidating statutes prohibiting analysis and remedies based on GHG emissions
3 and climate impacts, alleviating Youth Plaintiffs' injuries and preventing further
4 injury.

5 6. By prohibiting analysis of GHG emissions and
6 corresponding impacts to the climate, as well as how additional GHG emissions
7 will contribute to climate change or be consistent with the Montana Constitution,
8 the MEPA Limitation violates Youth Plaintiffs' right to a clean and healthful
9 environment and is unconstitutional on its face.

10 7. Plaintiffs have a fundamental constitutional right to a clean
11 and healthful environment, which includes climate as part of the environmental
12 life-support system.

13 8. The 2023 version of the MEPA Limitation, Mont. Code
14 Ann. § 75-1-201(2)(a), enacted into law by HB 971, is hereby declared
15 unconstitutional and is permanently enjoined.

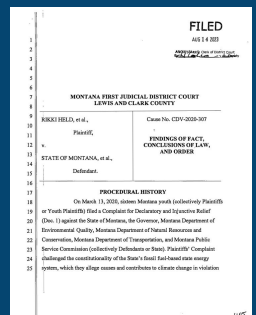
16 9. Mont. Code Ann. § 75-1-201(6)(a)(ii), enacted into law by
17 SB 557 from the 2023 legislative session, is hereby declared unconstitutional and
18 is permanently enjoined because it removes the only preventative, equitable relief
19 available to the public and MEPA litigants.

20 10. In addition to the findings, conclusions, and declarations set
21 forth above, injunctive relief is appropriate, prohibiting Defendants from acting
22 in accordance with the statutes declared unconstitutional.

23 11. Judgment is hereby found in favor of the Plaintiffs as
24 prevailing parties.

25 //

- The MEPA Limitation, Mont. Code Ann. § 75-1-201(2)(a), enacted into law by HB 971, is hereby declared unconstitutional and is permanently enjoined.
- Mont. Code Ann. § 75-1-201(6)(a)(ii), enacted into law by SB 557 from the 2023 legislative session, is hereby declared unconstitutional and is permanently enjoined





**Our Children's
Trust** Youth v. Gov



Navahine v. Hawai'i Dep't of Transportation

Eight of fourteen children of Hawai'i leading constitutional climate lawsuit against their state Department of Transportation.

Navahine F. v. Hawai'i Dep't of Transportation

- Systemic challenge to HDOT's operation of a transportation system that results in high levels of greenhouse gas emissions.
- Claims grounded in State Constitution and Public Trust Doctrine.
- Defendants:
 - Hawai'i Department of Transportation
 - The Director of Department of Transportation in official capacity
 - The Governor acting in official capacity



Navahine F. v. Hawai'i Department of Transportation

- 14 youth plaintiffs, vast majority Native Hawaiian
- Large portions of the complaint are in Native Hawaiian language
- Trial begins June 26, 2024
- Hawai'i Chief Justice Mike Wilson concurring in *In re HELCO*:
 - “[T]he right to life-sustaining climate system is also included in the due process right to ‘life, liberty, [and] property’ . . . and the public trust doctrine[.]”



Youth Plaintiff Spotlight: Kaliko T.

Kaliko is the youngest plaintiff in *Navahine*

Climate Crisis Impacts

- Climate induced drought threatens Kaliko's water supply and her 'ohana's ability to grow subsistence crops.
- Kaliko has **lost two homes to extreme events** associated with climate change
 - Intense flooding during Tropical Storm Olivia, the first tropical cyclone to make landfall on Maui
 - Recent devastating fires in Lahaina
- Recently featured recently featured on Here and Now (link in chat)





**Our Children's
Trust** Youth v. Gov

Kanuk v. State of Alaska

- Nelson (Yup'ik), Kipnuk
- Ananda (Eyak Athabascan), Cordova/Anchorage

The state has a sovereign obligation over
"ALL THE EARTH AND AIR WITHIN ITS DOMAIN."

-U.S. SUPREME COURT (1907)



Alaska's Supreme Court in *Kanuk v. State of Alaska*

- Plaintiffs have standing to sue the State over government conduct that affects the climate crisis
- “The complaint shows direct injury to a range of cognizable interests.”
- “[E]rosion, flooding, melting ice and increased temperatures threaten the foundation of Nelson’s home, village, native traditions, food sources, culture, and annual subsistence hunts.”
- “[F]loods, melting glaciers, dying forests and increased temperatures threaten Ananda’s village, wild Copper River Salmon and other food sources, native traditions, culture, and livelihood.”



**Our Children's
Trust** Youth v. Gov

Sagoonick v. State of Alaska

- Summer (Inupiaq)
- Lexine (Gwich'in Nation)
- Ananda (Eyak Athabascan)
- Vanessa (Rocky Boy Tribe [Montana])

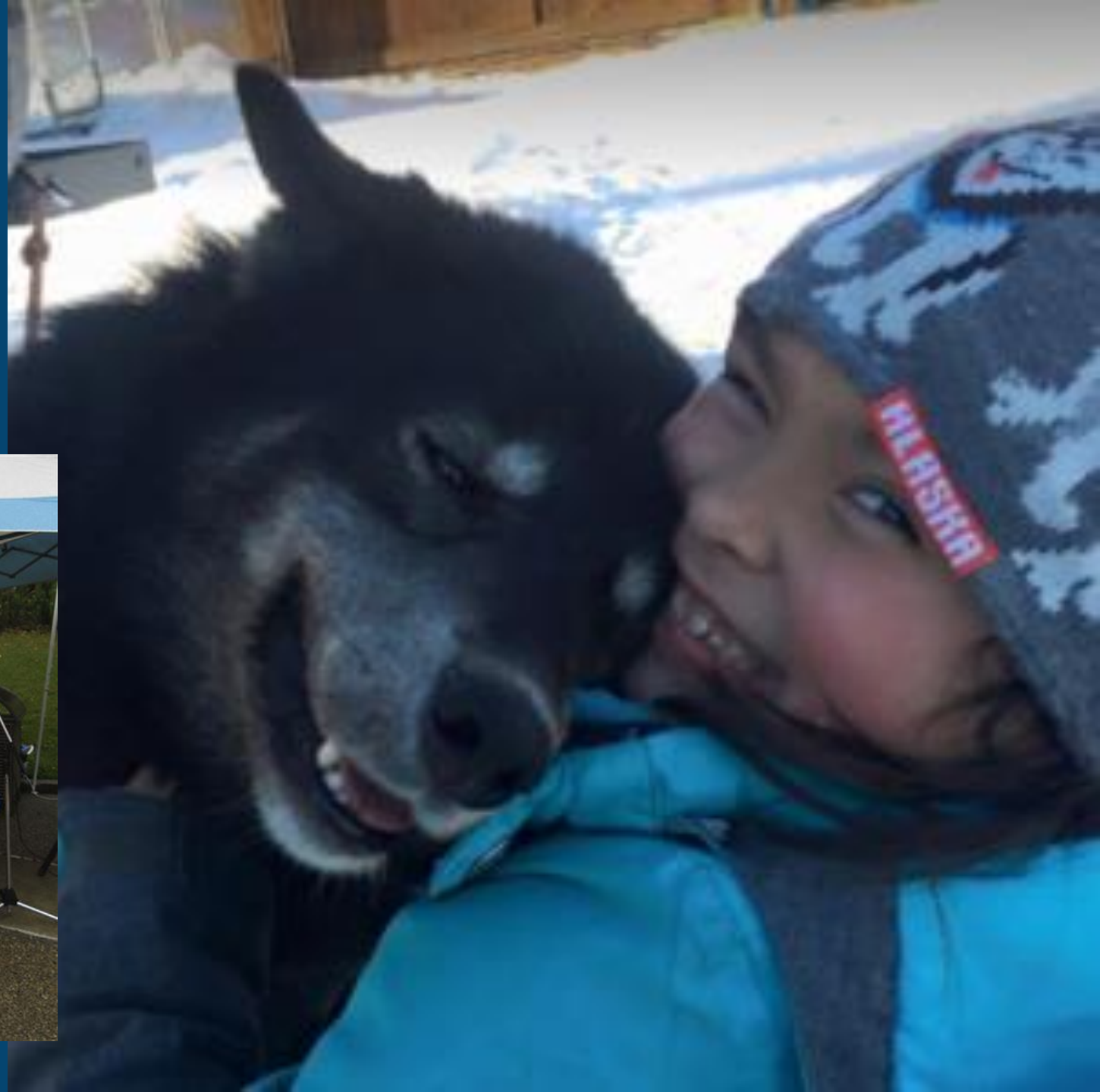
Plaintiff Lexine

- Gwich'in from Fort Yukon
- Climate harms to caribou and other wildlife upon which she and her people rely for subsistence and cultural purposes



Plaintiff Ananda

- Eyak Athabascan, homelands in Cordova
- “[F]loods, melting glaciers, dying forests and increased temperatures threaten Ananda’s village, wild Copper River Salmon and other food sources, native traditions, culture, and livelihood.”





**Our Children's
Trust** Youth v. Gov

Plaintiff Summer

“I care about my culture, it makes me who I am. We live off the land. We rely on our plants and animals to survive. Subsistence is my life. I am Inupiaq and I am proud.”





Plaintiff Summer

"I care about my culture, it makes me who I am. We live off the land. We rely on our plants and animals to survive. Subsistence is my life. I am Inupiaq and I am proud."



Hon. Angela Sheriga...



*Sagoonick v. State: Alaska Supreme
Court Justices Peter J. Maassen and
Susan M. Carney (dissenting)*

“[A] balanced consideration of prudential doctrines requires that we explicitly recognize a constitutional right to a livable climate -- arguably the bare minimum when it comes to the inherent human rights to which the Alaska Constitution is dedicated.”

Sagoonick v. State of Alaska (Jan. 28, 2022).





The Next Alaska Youth-led Case for Climate Justice



THEN

Sagoonick v. State of Alaska (Jan. 28, 2022):

“The Alaska Constitution and relevant statutes do not leave plaintiffs without recourse.”

NOW

The next Alaska youth-led constitutional climate case is launching in early 2024 and is open to youth across Alaska



The Next Alaska Youth-led Case for Climate Justice

To learn more about the opportunity for young people to join the fight for climate justice in Alaska's Courts, visit:

ourchildrenstrust.org/Alaska



bit.ly/OCT-NCI

If you know a young person interested in becoming a plaintiff in the next Alaska Youth-led lawsuit, scan the code above.

"The Alaska Constitution and relevant statutes do not leave plaintiffs without recourse."

*- Sagoonick v. State of Alaska
(Jan. 28, 2022)*



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mailing list!*



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COMMUNITY!**



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Questions



Thank You!

Andrew Welle

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Andrew@ourchildrenstrust.org



**To learn more about the opportunity
to join the fight for climate justice in
Alaska's courts, visit**

bit.ly/AKclimateyouth

