

IN THE SUPREME COURT OF THE STATE OF MONTANA

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 L.B. and B.B.; GRADEN)
 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,)
)
) v.)
)
) THE STATE OF MONTANA,)
)
) Respondent.)

FILED

JUN 15 2011

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

ORDER

Petitioners ask us to enter judgment in this original proceeding to declare that the State of Montana (State) holds the atmosphere in trust for the present and future citizens of the State of Montana. Petitioners further contend that this trust imposes on the State the affirmative duty to protect and preserve the atmosphere, including establishing and enforcing limitations on the levels of greenhouse gas emissions as necessary to mitigate human-caused climate change. At our request, the office of the Attorney General of the State of Montana has filed a summary response to the petition on behalf of the State.

A group that refers to itself as “Legislative Leaders” has moved for leave to file an amicus brief. A second group, the first identified member of which is a non-profit association called Climate Physics Institute, has moved for leave to intervene. Both of these groups state that their motions are opposed by both the Petitioners and the State.

An original proceeding in the form of a declaratory judgment may be commenced before this Court under limited circumstances. The circumstances include the presence of

constitutional issues of statewide importance, where the case involves purely legal questions of statutory and constitutional construction, and urgency and emergency factors make the normal appeal process inadequate. M. R. App. P. 14(4). We are persuaded by the State’s response that this petition fails to satisfy these criteria.

As the State points out, the petition incorporates factual claims such as that the State “has been prevented by the Legislature from taking any action to regulate [greenhouse gas] emissions[.]” The State posits that the relief requested by Petitioners would require numerous other factual determinations, such as the role of Montana in the global problem of climate change and how emissions created in Montana ultimately affect Montana’s climate.

The State further points out that in relation to urgency and emergency factors making the normal appeal process inadequate, this action is part of a nationwide effort known as the Atmospheric Trust Litigation. The State notes that Montana apparently is the only jurisdiction in which the litigation has been filed as an original proceeding in the state’s highest court. *See* www.ourchildrenstrust.org.

We conclude this case does not involve purely legal questions. This Court is ill-equipped to resolve the factual assertions presented by Petitioners. We further conclude that Petitioners have not established urgency or emergency factors that would preclude litigation in a trial court followed by the normal appeal process. Petitioners have failed to establish how emergent factors exist in Montana that require this Court’s immediate attention in light of the lack of original litigation in the other forty-nine states.

Therefore,

IT IS ORDERED that the Petition for Original Jurisdiction is DENIED and DISMISSED.

IT IS FURTHER ORDERED that the Legislative Leaders’ Motion to File an Amicus Brief is DENIED.

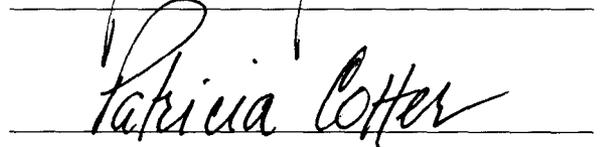
IT IS FURTHER ORDERED that the Climate Physics Institute group’s Motion to Intervene is DENIED.

The Clerk is directed to provide copies of this Order to all counsel of record, counsel for Legislative Leaders, and counsel for Climate Physics Institute.

DATED this 15th day of June, 2011.











Justices