IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 23-0575

RIKKI HELD, et al.,

Plaintiffs-Appellees,

v.

STATE OF MONTANA, et al.,

Defendants-Appellants.

On Appeal from the Montana First Judicial District Court, Lewis and Clark County Cause No. CDV 2020–307, the Honorable Kathy Seeley, Presiding

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AMICUS BRIEF OF NATIVE NATIONS IN MONTANA, KATHRYN SHANLEY, AND DENISE JUNEAU

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INTERESTS OF *AMICI CURIAE*

Amici are the following federally recognized Native Nations[1] with reservations within the State of Montana: Blackfeet Tribe of the Blackfeet Indian Reservation of Montana; The Chippewa Cree Indians of the Rocky Boy's Reservation, Montana; The Confederated Salish and Kootenai Tribes of the Flathead Reservation; The Fort Belknap Indian Community of the Fort Belknap Reservation of Montana; The Little Shell Tribe of Chippewa Indians of Montana; and The Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation of Montana (collectively "Native Nations"); as well as Indigenous education experts Kathryn W. Shanley and Denise Juneau. *Amici* respectfully submit this brief pursuant to Montana Rule of Appellate Procedure 12(7) in support of the Plaintiffs-Appellees. *Amici* urge this Court to affirm the trial court's ruling, which rightfully upholds the guarantees of the Montana Constitution to a clean and healthful environment. In doing so, the ruling also upholds the network of related and interconnected rights afforded by Montana's Constitution to members these Native

[1] This brief uses the term "Native Nations" in lieu of "Indian tribe," except where the latter term is quoted or intends specific legal meaning. *See generally* Angelique EagleWoman, *The Capitalization of "Tribal Nations" and the Decolonization of Citation, Nomenclature, and Terminology in the United States*, 49 MITCHELL HAMLINE L. REV. 623 (2023) (discussing the importance of the intentional capitalization of titles referencing Native peoples and the impacts of using colonial nomenclature).

Nations: the right to individual dignity under Article II, Section 4, and the right to the preservation of Tribal cultures under Article X, Section 1, Clause 2.

Amici have an important interest in ensuring that the rights afforded to Indigenous people under the Montana Constitution are upheld. Native Nation *Amici* collectively represent thousands of Tribal members and govern over eight million acres of land in the state. The interests of these Native Nations were heavily implicated throughout the trial, as the District Court heard hours of testimony from Indigenous Youth Plaintiffs and experts regarding the impact of climate change on Indigenous cultural practices and food sources. *See* Transcript of Proceedings, Vol. II at 19, 579-580 & 1502; Held v. Montana, Case No. DA 23-0575 (Feb. 13, 2024). For Native Nation *Amici*, climate change poses an existential threat to their connection to their homelands, cultures, and ways of life.

Amici Kathryn W. Shanley and Denise Juneau, both well-established and immensely qualified Indian education professionals in the state, have a strong interest in ensuring the preservation and continuance of Montana's Indigenous cultures. During her tenure as Director of Indian education at the Montana Office of Public Instruction, Ms. Juneau oversaw the implementation of Montana's Indian Education for All Act, which was enacted to satisfy the constitutional guarantees of Article X, Section 1 and mandated in part that "every Montanan, whether Indian or non-Indian, learn about the distinct and unique heritage of American Indians in a

culturally responsive manner." MONT. CODE. ANN. § 20-1-501(2)(a) (2023). As the Special Assistant to the Provost for Native American Indigenous Education, Ms. Shanley was similarly responsible for contributing to the development of Indigenous educational programs at the University of Montana, in addition to engaging in culture-based scholarship, teaching, and research throughout her career.

Montana has a unique, longstanding, and well-established legal tradition of safeguarding Indigenous cultures, and this tradition is enshrined in the state's constitutional guarantees. Collectively, *Amici* seek to ensure that these guarantees and the interests of Native Nations and Indigenous individuals in cultural preservation and continuance are considered by this Court. Therefore, the Native Nations and associated *Amici* submit this brief to assist the Court in its interpretation of the interrelationship of these unique—and uniquely Montanan—constitutional rights and obligations.

SUMMARY OF ARGUMENT

Since time immemorial, what is now known as Montana has been home to Indigenous people. This longstanding presence catalyzed deep knowledge of and connection between people and place as a fundamental aspect of Indigenous existence. After generation upon generation of learning and passing on that understanding, today's federally recognized Native Nations within the State of

Montana—six of whom appear here as *Amici*—work to ensure that this relationship with the environment and the education of future generations remain deeply intertwined.

The State of Montana is constitutionally committed to recognizing and protecting the unique status, interests, and presence of Native Nations and their Indigenous citizens within state boundaries. Starting with the first article of the state's Constitution, these commitments are foundational to the state's authority (or lack thereof) and define individual rights to be protected by the state, especially as interpreted and enforced by this Court. MONT. CONST. art. I. Though this case centers on the scope of a distinct constitutional right—the right to a clean and healthful environment—this Court's consideration of whether and how the legislature interprets that right implicates other rights enshrined by the Montana Constitution and the sovereign interests of Native Nations.

Specifically, in light of their deep connections with, knowledge of, and commitment to educating future generations, Native Nations and Indigenous people in the state depend on a clean and healthful environment to practice, maintain, and pass on their culture. These interests are protected by the Individual Dignity Clause, Article II, Section 4, and Indian Education Clause of the Montana Constitution, Article X, Section 1, Clause 2. Further, given the interrelationship of state and Tribal sovereign interests and rights reserved by Native Nations in

treaties with the United States, the scope and exercise of the state's constitutional duties and how those duties may be affected by the Montana Environmental Policy Act (MEPA) implicate the rights and authorities of Native Nations in Montana. MONT. CODE. ANN. § 75-1-102 (2023).

ARGUMENT

I. A 'clean and healthful environment' has particular importance for Native Nations and Indigenous citizens.

Though impossible to generalize across all the diverse Native Nations and Indigenous people in Montana, one of the strongest common roots of culture and identity is a deep connection to the land, water, wildlife, and natural environment. These places are not merely regarded as natural resources or sites for recreation but rather play a central role in defining systems of learning, understanding, culture, and the very existence of Indigenous people. "Tribal religions are actually complexes of attitudes, beliefs, and practices fine-tuned to harmonize with the lands on which people live." VINE DELORIA JR., GOD IS RED: A NATIVE VIEW OF RELIGION 69 (2003). For some Indigenous people, the land is alive and considered to be a relative as much as any human family member. HILLARY HOFFMAN & MONTE MILLS, A THIRD WAY: DECOLONIZING THE LAWS OF INDIGENOUS CULTURAL PROTECTION 41 (2020). More specific to Montana, the 2016 *Tribal Nations in Montana: A Handbook for Legislators* noted the same, pointing out that "Indian tribes and tribal traditions are also tied closely to the natural and spiritual

environments … [and] Tribal members in Montana consistently prioritize their connection and engagement with these sacred places because they provide spiritual, personal, and community balance."[2] Notably, given the history of dispossession and removal of Indigenous people from their historical homelands, many of these connections span reservation or geographical boundaries as well. *Id.* at 46.[3]

The record in this case exemplifies similar, more specific connections between Montana Tribes and their ancestral homelands. Former Council Chairman of the Confederated Salish and Kootenai Tribes, Joe Durglo, wrote in the Tribes' Climate Change Strategic Plan as adopted by Tribal Proclamation:

> Our lands and resources are the basis of our spiritual life … These resources also provide our future leaders with a connection to their ancestors and native traditions. Our culture committee reminds us that many of these foods, medicinal, and cultural resources are non-renewable. Our survival is woven together with the land. Plaintiffs' Exhibit 30 at P-0008105 (admitted Doc. 397), Held v. Montana, Case No. A 23-0575 (Feb. 13, 2024).

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[2] MONT. LEGIS. SERV. DIV., MARGERY HUNTER BROWN INDIAN LAW CLINIC, TRIBAL NATIONS IN MONTANA: A HANDBOOK FOR LEGISLATORS 31 (2016), https://leg.mt.gov/content/For-Legislators/Publications/tribal-nations-handbook-october2016.pdf [hereinafter *A Tribal Nations Handbook*].

[3] "[M]any Indian tribes maintain a sacred, strong connection to their reservation lands and resources as homelands. In addition, because present-day reservation boundaries commonly do not align with historical and traditional Tribal homelands, many Native Nations continue to maintain such connections with landscapes, wildlife, and places far beyond their own reservations." *Id.* at 46.

Additional trial court testimony by Indigenous Youth Plaintiffs and experts demonstrated how changes to the environment impact Tribes' abilities to learn about, practice, and sustain these connections. For example, the traditions of the Confederated Salish and Kootenai Tribes require snow to be on the ground to tell their origin stories. Transcript of Proceedings at 634-35; *see also Tribal Nations Handbook* at 31 ("Some of the sacred stories may be told only at certain times of the year or under certain circumstances."). Plaintiff Sariel Sandoval testified that without snow, these stories cannot be shared and passed down from the elders to the younger generations. Transcript of Proceedings at 634-35. The testimony of Plaintiff Sariel also expressed the anxiety and grief Tribal members face at the prospect of these stories being lost due to changes in the environment. *Id.* at 635.

Testimony also demonstrated how traditional food and medicine ways are being disrupted, including how berry harvests are delayed and streams where rainbow and bull trout were traditionally fished are drying up as spring snowmelts yield less water. *Id.* at 632-33; *Findings of Fact, Conclusions of Law, and Order* at 40-41, 103; Held v. Montana, No. CDV-202-307 (August 14, 2023). As documented by the Confederated Salish & Kootenai Tribes' Climate Change Strategic Plan, Tribal elders have noticed that bitterroot, used as an essential medicine and food source for Rocky Mountain Tribes long before becoming Montana's state flower, are stressed and becoming less bountiful. Plaintiffs' Exhibit

30 at P-0008145, P-0008122. As former Chairman Durglo noted, those changes portend significant impacts beyond the purely environmental consequences: "[H]ow can the bitterroot ceremony be conducted if there are no more bitterroot? What would happen to Tribal people if this were to happen?" Plaintiffs' Exhibit 30 at P-0008168.

As these examples and many more demonstrate, the culture and identity of Native Nations and Indigenous people in Montana are deeply rooted in the land and the stories, food, and lifeways connected to it. Thus, how these areas are sustained as part of a "clean and healthful environment" is of particular importance to Native Nations in Montana because failing to assess potential damage to the environment can cause cultural harm as well. MONT. CONST. art. IX § 1. The District Court concluded as much, finding that "Youth Plaintiffs have experienced past and ongoing injuries resulting from the State's failure to consider [greenhouse gas emissions] and climate change, including injuries to their … tribal and cultural traditions … ." *Findings of Fact, Conclusions of Law, and Order* at 86, ¶4, Held v. Montana, No. CDV-202-307 (Aug. 14, 2023).

Importantly, in addition to "maintain[ing] and improv[ing] a clean and healthful environment," the State of Montana is also constitutionally committed to protecting Indigenous cultures, individual dignity, and the sovereign rights of Native Nations. MONT. CONST. art. IX § 1. Given the connection between the

natural world, Indigenous cultures, and tribal sovereignty, these related constitutional obligations are also relevant here.

II. Montana's Constitution enshrines a longstanding and unique commitment by the state to safeguard the rights of Native Nations and Indigenous people to the integrity and practice of their cultures.

The people of Montana recognized and, through express constitutional language, committed the state to specific, interrelated obligations regarding the cultures of Native Nations and Indigenous individuals. As set forth in Article X, § 1, clause 2 of the Montana Constitution, "[t]he state recognizes the distinct and unique cultural heritage of the American Indian and is committed in its educational goals to the preservation of their cultural integrity." MONT. CONST. art. X, § 1, cl. 2 ("Indian Education for All Clause"). Similarly, Article II, Section 4 protects rights to individual dignity (known as the "Individual Dignity Clause"), including the inviolable right to be free from discrimination on the basis of one's "culture." MONT. CONST. art. II § 4, cl. 2. These constitutional commitments inform the Court's consideration of the scope of the right to a clean and healthful environment, particularly where the condition of the natural environment directly impacts how Indigenous cultures are sustained and practiced in Montana.

A. Montana's Constitution acknowledges and protects Indigenous cultures.

As interpreted by the Legislature, the Indian Education for All Clause commits the state to the recognition and preservation of Indigenous cultural

heritage by building an educational curriculum that ensures all Montanans learn about "American Indians in a culturally responsive manner, in cooperation with Native Nations in Montana." *See* MONT. CODE ANN. § 20-1-501(2) (a-b) (2023); MONT. CONST. art. X, § 1, cl. 2. This interpretation has been the basis for a decades-long effort to require adequate funding, curricula, and implementation of the state's constitutional mandate.[4] *See*, *e.g.*, Carol Juneau & Denise Juneau, *Indian Education for All: Montana's Constitution at Work in Our Schools*, 72 MONT. L. REV. 111, 125 (2011).

This Court has consistently recognized the importance of this constitutional provision. In *Helena Elementary School Dist. No. 1 v. State*, for example, the Court interpreted the Indian Education for All clause to "establish[] a special burden in Montana for the education of American Indian children which must be addressed as part of the school funding issues." *Helena Elementary School Dist. No. 1 v. State*, 236 Mont. 44, 58; 769 P.2d 684, 693 (1989). Similarly, in *Columbia Falls Elem. Sch. Dist. No. 6 v. State*, this Court did not disturb a lower court holding that the state "has failed to recognize the distinct and unique cultural heritage of American Indians and that it has shown no commitment in its educational goals to the preservation of Indian cultural identity, as demanded by Article X, Section 1(2)."

[4] Alex Sakariassen, *Montana's Long Road to Make Good on Indian Education for All,* MONT. FREE PRESS, (Mar. 23, 2022), https://montanafreepress.org/2022/03/23/montana-constitution-indian-education/.

Columbia Falls Elem. Sch. Dist. No. 6 v. State, 2005 MT 69, 326 Mont. 304, 314, 109 P.3d 257, 263. The outcome of both cases confirms the state's affirmative duty to uphold the guarantees of Article X.

This is consistent with the Court's approach to considering the cultural integrity and practices of Native Nations and Indigenous people in other contexts. For example, in *Matter of M.E.M.*, this Court acknowledged the "unquestionably profound" cultural diversity of Tribes and recognized Indigenous children as fundamental to the long-term survival of Tribal cultural practices. *Matter of M.E.M.*, 195 Mont. 329, 333; 635 P.2d 1313, 1316 (1981). It reasoned, "[a]bsent the next generation, any culture is lost and necessarily relegated, at best, to anthropological examination and categorization." *Id.* In its consideration of the Indian Education for All Clause and the federal Indian Child Welfare Act, the Court expressly noted that it was "cognizant of [its] responsibility to promote and protect the unique Indian cultures of our state for all future generations of Montanans." *Id*.

The direct connection between the issues at stake in this case and the cultural integrity of Native Nations and Indigenous people calls for similar respect and consideration here. The long history, present state, and future vibrancy of Indigenous cultures in Montana depend upon their continuing connection to the lands, waters, and natural environment within the state. Thus, the integrity of these cultural practices is and will continue to be affected by how the state carries out its

duties to ensure a "clean and healthful environment." This was evidenced by the testimony of Indigenous Youth Plaintiffs throughout trial. Plaintiff Sariel emphasized that "carrying on her community's tradition is important because it is their way of life and reflects their connection to the land," *Findings of Fact, Conclusions of Law, and Order* at 51, 103, Held v. Montana, No. CDV-202-307 (August 14, 2023). Similarly, Shane Doyle testified that increasing temperatures, drought, and wildfire smoke interfered with his daughters' abilities to participate in and learn about cultural activities such as traditional dancing at the Crow Fair and the harvesting of chokecherries. *Id.* at 63-64.

As articulated by the Indigenous Youth Plaintiffs, the generations-long cultural education practices that have ensured the resilience and continuance of Indigenous cultures across Montana depend upon the intimate relationship between Indigenous people and the land. These distinct cultural practices define the integrity of Indigenous culture. Because the Montana Constitution pledges the state to preserve that cultural integrity, this Court is likewise obligated to consider how its decision in this case aligns with those constitutional commitments.

B. Montana's Constitution acknowledges and protects the distinct cultural rights of Indigenous individuals.

Supplementary to the state's commitment to recognize and protect the integrity of Indigenous educational and cultural practices more broadly, the

Montana Constitution also recognizes an individual right to dignity and culture. Specifically, Article II, Section 4 provides that:

> The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas. MONT. CONST. art. II § 4.

This right to individual dignity, in addition to the other rights enshrined in Montana's Declaration of Rights, are "'fundamental,' meaning that these rights are significant components of liberty, any infringement of which will trigger the highest level of scrutiny, and thus, the highest level of protection by the courts." *Walker v. State*, 2003 MT 134, 316 Mont. 103, 120, 68 P.3d 872, 883 (internal citations omitted). The Individual Dignity Clause has long been interpreted to provide greater individual protections than the Fourteenth Amendment of the U.S. Constitution. *A.J.B. v. Montana Eighteenth Judicial District Court, Gallatin County*, 2023 MT 7, 411 Mont. 201, 209, 523 P.3d 519, 525; *Farrier v. Teacher's Retirement Bd.*, 2005 MT 229, 328 Mont. 375, 379, 120 P.3d 390, 394; *Snetsinger v. Mont. Univ. Sys.*, 2004 MT 390, 325 Mont. 148, 153-54, 104 P.3d 445, 449-50 (internal citations omitted). Indeed, that was its stated purpose by the drafters of the Montana Constitution. *Gazelka v. St. Peter's Hospital*, 2018 MT 152, 392 Mont. 1, 5, 420 P.3d 528, 532 (citing MONT. CONST. CONVENTION, COMMITTEE

PROPOSALS, 628 (Feb. 22, 1972); MONT. CONST. CONVENTION, VERBATIM TRANSCRIPT, 1642 (Mar. 7, 1972)).

This Court has approached these rights comprehensively, noting in *Armstrong v. State*, that the Declaration of Rights is "not simply a cook book of disconnected and discrete rules," but rather a "cohesive set of principles, carefully drafted and committed to an abstract ideal of a just government. It is a compact of overlapping and redundant rights." *Armstrong v. State*, 1999 MT 261, ¶ 71, 296 Mont. 361, 388-89, 989 P.2d 364, 383. Scholars have also suggested that the Individual Dignity Clause "can inform, reciprocally, the meaning and force of some of the other, especially the more abstract, rights … Operating this way, the application of the dignity right can play a mutually complementary role, supporting or being supported by the other right." Matthew O. Clifford & Thomas P. Huff, *Some Thoughts on the Meaning and Scope of the Montana Constitution's "Dignity Clause" with Possible Applications*, 61 MONT. L. REV. 301, 325-26 (2000) (emphasis omitted).

The drafters of the Montana Constitution included "culture" among the inviolable individual rights to which the state was committed to protect. Of particular importance, as noted by Delegate Mansfield during the convention's consideration of this provision, culture "was incorporated specifically to cover groups whose cultural base is distinct from mainstream Montana, *especially the*

American Indians." *Montana Constitutional Convention Proceedings, (1971-1972)*, 5 THE MONT. CONST. COLLECTION 1217, 1642 (1981) (emphasis added).

Consistent with and supplementary to the Indian Education for All Clause, the Individual Dignity Clause further confirms the Constitution's recognition and intent to protect the inherent and discrete Indigenous cultures and traditional practices within Montana. Consistent with that constitutional intent, MEPA expressly mandates "culturally pleasing surroundings" and the protection of "cultural … aspects" as an essential part of the "continuing responsibility of the state of Montana." MONT. CODE ANN. §§ 75-1-103(2), (2)(b), (2)(e) (2023).

The Montana Constitution's drafters understood that Indigenous cultures are distinct and therefore demand their own consideration, acknowledgement, and protection. In the context of both education and fundamental individual rights, the state committed itself to ensuring those cultures would remain a vital part of Montana's social fabric into the future. Central to the continuing vitality and perpetuation of those cultures is the health of the natural environment. This connection was articulated by Indigenous Youth Plaintiffs at trial. For example, Shane Doyle testified on behalf of his daughters that "abnormal and extreme weather conditions caused by climate change have impacted Ruby's and Lilian's ability to engage and otherwise partake in cultural practices that are central to their spiritual *and individual dignity*." *Findings of Fact, Conclusions of Law, and Order*

at 103; Held v. Montana, No. CDV-202-307 (August 14, 2023) (emphasis added). Thus, although the enforcement of these specific rights is not at issue here, their place and importance within the state's constitutional structure bear directly on the issues at hand.

C. As interpreted by this Court, Montana's Constitution also protects the rights of Native Nations as sovereigns and parties to treaties with the United States.

In addition to the Constitution's recognition and protection of Indigenous cultures as distinct and vital parts of the state, both the Montana Constitution and this Court affirm the unique and distinct legal status of Tribal governments as sovereign nations. As such, both Montana and Native Nations, particularly those with off-reservation rights reserved in treaties with the United States, share responsibility for the sovereign stewardship of the natural resources on which their citizenry depend. These commitments are also relevant as the Court considers the scope of the state's responsibility to review and authorize activities consistent with the "clean and healthful environment" clause.

The United States Supreme Court recognized the inherent sovereignty of Native Nations—and the corresponding protections against state encroachment—long before Montana was admitted to the Union. *See*, *e.g.*, *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831); *Worcester v. Georgia*, 31 U.S. 515 (1832). This framework informed the legal basis for Montana's compact with the United States,

which, consistent with the pre-statehood territorial commitments, mandates the state to abide by "the agreement and declaration that all lands owned or held by any Indian or Indian tribes shall remain under the absolute jurisdiction and control of the congress of the United States." MONT. CONST. art. I. In addition, the United States engaged in government-to-government negotiations for numerous treaties with Native Nations across the region that would become Montana. *See*, *e.g.*, Treaty of Fort Laramie with the Sioux, Etc., September 17, 1851, 11 Stat. 749; Treaty of Hell Gate, July 16, 1855, 12 Stat. 975; Treaty with the Crows, May 7, 1868, 15 Stat. 649; Treaty with the Sioux, Etc. Apr. 29, 1868, 15 Stat. 635. Those treaties are constitutionally protected as the supreme law of the land under Article VI of the U.S. Constitution; a status affirmed by numerous decisions of the United States Supreme Court. U.S. CONST. art. VI, cl. 2; *see*, *e.g.*, *United States v. Winans*, 198 U.S. 371 (1905); *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172 (1999); *Herrera v. Wyoming*, 139 S. Ct. 1686, 203 L.ed.2d 846 (2019).

This Court has recognized that Tribal sovereignty and rights reserved by treaties with the United States are a distinct but central part of the state's history, constitutional structure, and sovereign relations. Seventy years ago, the Court drew on these legal foundations to insulate Tribal members on the Flathead Reservation from state fish and game laws, recognizing that treaties and Tribal authority are "a part of the law of the state as much as the state's own laws and Constitution and is

effective and binding on state legislatures." *State v. McClure*, 127 Mont. 534; 539-40, 268 P.2d 629, 631 (1954). Like the United States Supreme Court, this Court's recognition of the rights reserved in treaties was premised on the preexisting sovereignty and practices of the Native Nations. This recognition supports the basic legal understanding of treaties not as a grant of rights to those Nations, but rather as a recognition of the rights inherent in Tribes as sovereign nations. *See id.* at 540. As the Court acknowledged, "[The tribes] had always exercised their right to hunt and fish [on lands ceded by treaty] from time immemorial. It was their ancestral home. The treaty confirmed their ownership and their rights." *Id.* In recognizing these inherent rights, this Court, consistent with the rulings of the United States Supreme Court, took upon itself the "responsibility to see that the terms of the treaty are carried out … in accordance with the meaning they were understood to have by the Tribal representative at the council." *Id.* at 544 (citing *United States v. Kagama*, 118 U.S. 375, 384 (1886); *Seufert Bros Co v. United States*, 249 U.S. 194, 198-99 (1919)). Further, the Court obliged itself to carry out the treaties "in a spirit which generously recognizes the full obligation of this nation to protect the interests of [Tribal members]." *Id.*

More recently, this Court drew upon those traditions to confirm that the broader commands of "federal Indian law regarding the rights of Indians is binding on the state." *State v. Shook*, 2002 MT 347, ¶ 15, 313 Mont. 347, 352, 67 P.3d 863,

866. There, relying in part on the recognition that the state's Constitution expressly recognizes and distinguishes Indigenous people in Article X, Section 1, the Court upheld a state regulation closing reservation lands to non-tribal member hunting. *Id.* That holding confirmed that the distinct legal status, rights, and standing of Native Nations provide a basis for analyzing state actions with regard to "the fulfillment of the unique federal, and consequent state, obligation toward Indians." *Id.* (citation omitted).

At times, this Court has been called upon to determine how state law may apply to or be preempted by these doctrines of federal Indian law and their prescribed protections of Tribal rights and sovereignty. *See e.g., State ex rel. Greely v. Confederated Salish & Kootenai Tribes*, 219 Mont. 76; 712 P.2d 754 (1985). Elsewhere, similar conflicts have resulted in decisions recognizing state obligations to take action to comply with those rights, *see*, *e.g.*, *United States v. Washington*, 853 F.3d 946 (9th Cir. 2017), *aff'd by an equally divided Court*, 584 U.S. 837 (2018), or defined the boundaries of state authority with respect to treaty-reserved or sovereign rights. *See*, *e.g.*, *Herrera v. Wyoming*, 139 S. Ct. 1686, 203 L.ed.2d 846 (2019). While this case does not present such a challenge, it does call upon the Court to determine the extent of the state's duties to assess actions that may affect the environment, and consequently, Native Nations' exercise of their sovereign authorities and treaty rights. Those overlapping duties, rights, and interests counsel

the consideration of these essential federal Indian law doctrines as "a part of the law of the state as much as the state's own laws and Constitution," *McClure*, 127 Mont. at 539-40; 268 P.2d at 631, and the "unique federal, and consequent state, obligation toward Indians," *Shook*, 313 Mont. at 352; 67 P.3d at 866.

Here, affirming the trial court's decision would be consistent with this Court's precedent recognizing the state's obligation to uphold Native Nations' sovereignty and treaty rights. A clean and healthful environment is fundamental to Native Nations' ability to continue the exercise of these authorities, especially through the practice and passing of cultural knowledge. This Court has repeatedly recognized that Montana may not infringe on these rights, and instead must uphold the state's "unique ... obligation" to Native Nations. *Id.* Thus, in conjunction with the protections afforded to Native Nations under the Montana Constitution, the sovereign status of Native Nations and their treaty reserved rights further support the trial court decision.

CONCLUSION

Montana's Constitution specifically recognizes and protects the right of Native Nations and Indigenous individuals to preserve and sustain their cultural traditions through the education of future generations. These rights are inherently tied to the right to a clean and healthful environment. *Amici* therefore respectfully request that this Court affirm the trial court's judgment.

Respectfully submitted on March 22, 2024,

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 16(3) of the Montana Rules of Appellate Procedure, I certify that this Brief is printed with proportionally spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by Microsoft Word is 4694 words, excluding certificate of service and certificate of compliance.

DATED this 22nd day of March, 2024.

Monte Mills