

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

TOWNSHIP OF MARPLE,	:	
Petitioner,	:	No. 1385 C.D. 2024
	:	
v.	:	
	:	
PENNSYLVANIA PUBLIC UTILITY	:	
COMMISSION,	:	
Respondent	:	
	:	
THEODORE UHLMAN AND JULIE	:	
BAKER,	:	
Petitioners,	:	No. 1423 CD 2024
	:	
v.	:	
	:	
PENNSYLVANIA PUBLIC UTILITY	:	
COMMISSION,	:	
Respondent	:	

BRIEF OF *AMICI CURIAE* OUR CHILDREN’S TRUST AND MOUNTAIN WATERSHED ASSOCIATION IN SUPPORT OF PETITIONERS

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INTRODUCTION

Our Children’s Trust (“OCT”) and Mountain Watershed Association (“MWA”) submit this *amici curiae* brief in support of Petitioners. Petitioners challenge the Pennsylvania Public Utility Commission’s (“PUC”) decision to override local zoning decisions to approve the construction of a fossil gas infrastructure project (the “Project”) that, in the midst of Pennsylvania’s existing climate crisis, will expand the use of fossil fuels, thereby locking in further climate pollution¹ and resulting harms to Pennsylvania’s citizens and public natural resources for decades. Among other claims, Petitioners argue the PUC breached its duty under Pennsylvania’s Environmental Rights Amendment (“ERA”) to evaluate the Project’s climate effects. *Amici curiae* seek to assist the Court by highlighting the broader context of the relevant legal issues. First, because every additional ton of climate pollution worsens the harms to Pennsylvanians and the Commonwealth’s public natural resources from Pennsylvania’s already critical climate crisis, the protections of the ERA are triggered in this case. Second, the fundamental rights enshrined in Pennsylvania’s Constitution operate to *substantively* restrict the government from approving projects that worsen the climate crisis.

¹ Climate pollution consists of greenhouse gas emissions, including carbon dioxide and methane. Climate pollution from fossil fuel development and combustion, predominantly carbon dioxide, is the primary cause of anthropogenic climate change.

IDENTITY AND INTEREST OF AMICUS CURIAE²

A. Our Children's Trust

OCT is a non-profit public interest law firm that provides strategic, campaign-based legal services to youth from diverse backgrounds to secure their legal rights to a safe and stable climate system. OCT works to protect the Earth's climate system for present and future generations by representing young people in legal efforts at federal, state, and global levels to secure their binding and enforceable fundamental rights to a healthy atmosphere and stable climate, based on the best available science.

OCT currently represents youth in active constitutional climate litigation pending in the United States Supreme Court;³ the United States District Court for the Central District of California;⁴ and in the state courts of Utah,⁵ Virginia,⁶ Alaska,⁷ and Florida,⁸ each of which challenges government policies and practices that cause and contribute to the climate crisis, endangering the health and safety of children in violation of their constitutional rights. OCT has also represented Pennsylvania youth in the pursuit of climate justice under Pennsylvania's Environmental Rights Amendment⁹ and secured landmark constitutional climate rights victories for youth

² No person or entity other than *amici curiae*, its members, or counsel paid for the preparation or authored this *amici curiae* brief in whole or in part.

³ *Juliana v. United States*, No. 24-645 (U.S. Sup. Ct.).

⁴ *Genesis B. v. U.S. EPA*, No. 2:23-cv-10345-MWF (C.D. Cal.).

⁵ *Natalie R. v. Utah*, No. 20230022-SC (Utah Sup. Ct.).

⁶ *Layla H. v. Virginia*, No. 240684 (Va. Sup. Ct.).

⁷ *Sagoonick v. Alaska*, No. 3AN-24-06508 CI (Alaska Third Jud. Dist. at Anchorage).

⁸ *Reynolds v. Fla. Pub. Serv. Comm'n*, No. 2024-019966-CA-01 (Fla. 11th Jud. Cir. Ct., Miami-Dade Cnty.).

⁹ *Funk v. Wolf*, 144 A.3d 228 (Pa. Commw. Ct. 2016).

under similar provisions of the Constitutions of Montana¹⁰ and Hawai‘i.¹¹

Given OCT’s mission, experience, and leading advocacy in enforcing environmental rights provisions in the context of climate change, OCT has a unique perspective, expertise, and a significant interest in informing the court on the fundamental protections Pennsylvania’s Constitution affords against government policies and actions that perpetuate fossil fuels and worsen the climate crisis.

B. Mountain Watershed Association

MWA is a community-led, nonprofit organization dedicated to the protection, preservation, and restoration of the Youghiogheny River watershed and its broader communities through conservation, recreation, education, and advocacy. As home to the Youghiogheny Riverkeeper, MWA has worked tirelessly for over thirty years to repair damage to water quality and habitat caused by more than a century of fossil fuel extraction. MWA is dedicated to protecting Pennsylvania’s watersheds from the ravages of climate change that will worsen with the expansion of fossil fuel infrastructure, including increasing temperatures, precipitation, flooding, and harmful algal blooms, all of which damage the ecosystems, stream flows, and water quality on which Pennsylvanians depend.

Given MWA’s missions, experience, and advocacy, MWA has a direct interest in ensuring that Pennsylvania courts uphold the fundamental protections of

¹⁰ *Held v. Montana*, 560 P.3d 1235 (Mont. 2024).

¹¹ *Navahine F. v. HDOT*, No. 1CCV-22-0000631, Joint Stipulation and Order re: Settlement (Haw. 1st Cir. Ct. June 20, 2024).

rights in the Commonwealth’s Constitution as a substantive safeguard against environmental degradation and further harm from fossil fuel infrastructure and climate change.

ARGUMENT

I. Climate Change Is Already Degrading Pennsylvania’s Public Natural Resources and Harming the Health and Safety of Pennsylvanians; The Project Would Increase Climate Pollution, Worsening These Harms.

In earlier proceedings, this Court vacated the PUC’s approval of the Project and ordered the PUC to conduct a “constitutionally sound environmental impact review” pursuant to the PUC’s obligations under the ERA. *Twp. of Marple v. Pa. Pub. Util. Comm’n*, 294 A.3d 965, 975 (Pa. Commw. Ct. 2023). The PUC’s subsequent refusal to assess the Project’s climate ramifications violates its duty to perform a constitutionally sound assessment under the ERA because such effects are a reasonably foreseeable consequence of approving the Project.

The development, transport, and combustion of fossil fuels, including fossil gas, releases climate pollution into the atmosphere, driving dangerously increasing temperatures, flooding, prevalence and transmission of diseases and pests, disruptions to the food supply, and other conditions that harm the health and safety of Pennsylvanians and degrade public natural resources.¹² The best available science is unequivocal that expanding the use of fossil fuels through the approval of new

¹² DEP, Climate Change in PA, <https://gis.dep.pa.gov/ClimateChange/index.html> (last visited Feb. 19, 2025).

fossil fuel infrastructure increases climate pollution, worsening these harms. As the Intergovernmental Panel on Climate Change (“IPCC”) has noted, “[e]very tonne of [greenhouse gas] emissions adds to global warming” and “[e]very increment of warming results in rapidly escalating hazards.”¹³ The Commonwealth has acknowledged in its own assessments that, as a result of climate pollution from fossil fuels, “[c]hanging climate patterns have caused and will continue to cause impacts to public health, infrastructure, emergency services, and major economic contributors like agriculture, tourism, and recreation.”¹⁴

For instance, Pennsylvania has already seen a substantial increase in precipitation over the last century, with some parts of the Commonwealth facing a 10% increase and others a 20% increase of precipitation.¹⁵ The increasing precipitation has already caused record-breaking damage to infrastructure, costing the Commonwealth \$125.7 million in replacement costs in 2018 alone.¹⁶ For example, in 2018, flooding led to disaster declarations in 33 counties.¹⁷ Flooding damages infrastructure and destroys homes, businesses, harvests, and livelihoods.¹⁸ Flooding also threatens public health through exposure to contaminated flood

¹³ IPCC, *Summary for Policymakers*, in *Climate Change 2021: The Physical Science Basis*, 28 (2021), https://www.ipcc.ch/report/ar6/wg1/downloads/report/IPCC_AR6_WGI_SPM.pdf; IPCC, *Urgent Climate Action Can Secure a Liveable Future for All* (Mar. 20, 2023), <https://www.ipcc.ch/2023/03/20/press-release-ar6-synthesis-report/>.

¹⁴ DEP, *supra* note 12.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ DEP et. al., *Pennsylvania Climate Action Plan* iii (Sept. 2021), available at <https://www.pa.gov/agencies/dep/residents/climate-change/pa-climate-action-plan.html>.

¹⁸ *Id.*

water.¹⁹ Flooding in industrial or brownfield areas can distribute hazardous materials widely, damage storage tanks and pipelines, and spread contaminated soils.²⁰ In agricultural areas, flooding can spread contaminants from animal waste, causing irreparable damage.²¹ Impaired water quality, a common effect of flooding, harms Pennsylvanians' health through contact during outdoor recreation and causes gastrointestinal illness when drinking water is affected.²² Increasing flooding due to climate change can lead to the closing of recreational facilities, strand state park visitors, cause lakeshore and streambank erosion and sedimentation, and increase water treatment costs.²³

Temperatures in Pennsylvania have increased by 1.8 degrees Fahrenheit in the last century and, with continuing government approval of fossil fuel projects, are expected to warm an additional 5.9 degrees by 2050.²⁴ The warmer and wetter weather leads to increased concentrations of ozone pollution causing higher asthma rates and increasing mold and allergy-causing pollen.²⁵ Young people are particularly vulnerable to higher temperatures because their developing bodies are not as efficient at thermoregulation which can manifest as lightheadedness, fainting,

¹⁹ DEP, Impacts, Climate Change, <https://www.pa.gov/agencies/dep/residents/climate-change/impacts.html> (last visited Feb. 24, 2025).

²⁰ DEP et. al., Pennsylvania Climate Impacts Assessment 2021, at 54 (Jan. 2021) [hereinafter PA Climate Assessment], available at <https://www.pa.gov/agencies/dep/residents/climate-change/impacts.html>.

²¹ *Id.*

²² *Id.*

²³ DNCR, Climate Change Adaptation and Mitigation Plan 9 (June 2018).

²⁴ DEP, *supra* note 12.

²⁵ *Id.*

muscle breakdown, renal (i.e., kidney) failure, seizure, coma, or death in extreme cases.²⁶

The Commonwealth has found that climate change, in interaction with insect pests and pathogens, is already killing off native trees and plants, animals, and rare and endangered species.²⁷ Such changes disrupt ecosystem processes and functions; change the timing of natural cycles; reduces needed diversity in native trees, shrubs, and understory plants; shifts forest community composition; and degrades the Commonwealth's forest products industry.²⁸ The Commonwealth has concluded, “[w]hile climate change impacts are already being felt in Pennsylvania, the most serious effects are yet to come.”²⁹

The cause of these devastating impacts is undisputed. The Commonwealth acknowledges that the continuing use of fossil fuels results in a significantly hotter and wetter climate in Pennsylvania and will cause further harm to human health, the agriculture and recreation industries, and increase the risks of flooding and severe pollution.³⁰ The Commonwealth acknowledges that with the continuing use of fossil fuels Pennsylvanians will experience a further increase in heat-related illnesses and deaths, allergies, mosquito and tick-related illnesses such as Lyme disease,

²⁶ EPA, Climate Change and Children's Health and Well-Being in the United States 25 (Apr. 2023), https://www.epa.gov/system/files/documents/2023-04/CLiME_Final%20Report.pdf.

²⁷ DNCR, Climate Change Adaptation and Mitigation Plan 5 (June 2018).

²⁸ *Id.*

²⁹ *Id.* at 13.

³⁰ PA Climate Assessment, *supra* note 20, at xi–xiv.

heightened exposure to contaminated floodwater, and poorer indoor air quality due to mold growth.³¹ More of Pennsylvania’s infrastructure will be destroyed by flooding and severe weather patterns, with a substantial impact on low-income communities.³² The Commonwealth recognizes that climate change does not affect all populations equally, and that young people in Pennsylvania are particularly vulnerable to these threats to health and safety.³³

The most recent IPCC report underscores the urgency of the situation:

“[c]limate change is a threat to human well-being and planetary health (*very high confidence*). There is a rapidly closing window of opportunity to secure a livable and sustainable world for all (*very high confidence*). . . . The choices and actions implemented in this decade will have impacts now and for thousands of years (*high confidence*).”³⁴

Thus, to protect a safe and stable climate, prevent further threat to public health and safety, and avoid further degradation of Pennsylvania’s public natural resources, it is critical that the Commonwealth and its agencies prevent further entrenching the use of fossil fuels through the approval of new fossil fuel infrastructure projects. The PUC must account for the climate harms that would result from the Project in order to conduct a constitutionally sound review under the ERA.

³¹ *Id.*

³² *Id.* at 49–56.

³³ *Id.* at 69–70.

³⁴ IPCC, *Summary for Policymakers, in* Climate Change 2023: Synthesis Report, 24, 48 (2023), https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf .

II. Pennsylvania’s Constitution Provides Fundamental, Substantive Protections Against Government Policies and Actions That Worsen the Climate Crisis.

The fundamental human rights enshrined in Pennsylvania’s Constitution include substantive protections that restrict the Commonwealth from taking actions and pursuing policies that worsen the climate crisis—like the PUC’s approval of the new fossil gas infrastructure at issue in this case. These protections are most notably evident in Pennsylvania’s ERA, article I, section 27, which confirms: (1) that “[t]he people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment,” and (2) the inherent trust relationship between the Commonwealth and all Pennsylvanians, including future generations, pursuant to which the Commonwealth has the affirmative duty to “conserve and maintain [Pennsylvania’s public natural resources] for the benefit of all the people.” The fundamental protection of Pennsylvanians’ lives, health, safety, and property from the harms of government-caused climate change is also inherent in the substantive due process rights guaranteed in Pennsylvania’s Constitution, which should be read *in pari materia* with the ERA. *See Jubelirer v. Rendell*, 953 A.2d 514, 528 (Pa. 2008) (“[W]here two provisions of our Constitution relate to the same subject matter, they are to be read *in pari materia*.”). Indeed, courts around the world have found that protection from the harms of climate pollution is a matter of substantive fundamental human rights.

a. Pennsylvania’s Environmental Rights Amendment Provides Fundamental Substantive Protections Against Government Policies and Conduct That Worsen the Climate Crisis.

The placement of the ERA within the Declaration of Rights of Pennsylvania’s Constitution (article I) “places citizens’ environmental rights on par with their political rights[,]” firmly establishing their fundamental nature. *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 960 (Pa. 2013). The express language of Pennsylvania’s Constitution describes the rights enshrined in article I, including those in the ERA, as “general, great and essential” and demands those rights remain “inviolable.” Pa. Const. art. I, pmb1., § 25; *Robinson Twp.*, 83 A.3d at 947. Thus, like the other fundamental rights enumerated in article I, Pennsylvanians’ right to “clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment” are “fundamental rights reserved to the people[.]” *Pa. Env’t Def. Found. v. Commonwealth*, 161 A.3d 911, 930–31 (Pa. 2017); *see also Robinson Twp.*, 83 A.3d at 948 (“The Declaration of Rights assumes that the rights of the people articulated in Article I of our Constitution—via-à-vis the government created by the people—are inherent in man’s nature and preserved rather than created by the Pennsylvania Constitution.”).

The fundamental rights to clean air, pure water, and preservation of the environment in the ERA are “prohibitory,” and thus substantively restrict the government from taking actions and pursuing policies that impair these rights. *Pa. Env’t Def. Found. v. Commonwealth*, 640 Pa. 55, 88 (Pa. 2017). Because climate

change degrades all aspects of Pennsylvania’s natural environment, as the government itself acknowledges (*see* section I) the fundamental rights enshrined in the ERA should be construed to constrain government policies and actions that worsen climate pollution, like the PUC’s approval of the new fossil fuel infrastructure project at issue in this case. *See Jubelirer*, 953 A.2d at 528 (Pennsylvania’s courts seek the “natural interpretation the ratifying voter would give to the provisions of the Constitution”) (internal quotations omitted).

The scope of the Commonwealth’s substantive obligations under the ERA encompass an *affirmative* duty to “prohibit the degradation, diminution, and depletion” of public natural resources and to “act affirmatively . . . to protect the environment.” *Pa. Env’t Def. Found.*, 161 A.3d at 933. This duty applies to degradation that is occurring due to climate change. The drafters of the ERA intended that the concept of public natural resources was to evolve in line with emerging societal concerns, such as climate change, and should apply to “not only state-owned lands, waterways, and mineral reserves, but also resources that implicate the public interest, such as ambient air, surface and ground water, wild flora, and fauna (including fish)[.]” *Robinson Twp.*, 83 A.3d at 955. Government actions that are known to increase climate pollution and cause degradation to each of these resources thus should be read to trigger the substantive protection of fundamental rights afforded under the ERA.

In interpreting state constitutional provisions similar to Pennsylvania’s ERA, the supreme courts of other states have found they include protections against the harms of climate change. For example, the Hawai‘i Supreme Court held that the “right to a clean and healthful environment” in article XI, section 9 of Hawai‘i’s Constitution “encompasses the right to a life-sustaining climate system,” that “is not just affirmative; it is constantly evolving.” *Matter of Hawai‘i Elec. Light Co., Inc.*, 526 P.3d 329, 335–36 (Haw. 2023); *see also Navahine F. v. HDOT*, No. 1CCV-22-0000631, Joint Stipulation and Order re: Settlement (Haw. 1st Cir. Ct. June 20, 2024) (recognizing that “[t]he right to a clean and healthful environment under article XI, section 9 of the Hawai‘i Constitution . . . ‘subsumes a right to a life-sustaining climate system’”). Likewise, in *Held v. Montana*, the Montana Supreme Court ruled that the right to a “clean and healthful environment” guaranteed in article II, section 3 and article IX, section 1 of the state constitution, includes a fundamental right to a “stable climate system.” 560 P.3d at 1252. In supporting its ruling, the Court cited “extensive, undisputed findings of fact that [anthropogenic climate change is] drastically altering and degrading Montana’s climate, rivers, lakes, groundwater, atmospheric waters, forests, glaciers, fish, wildlife, air quality, and ecosystem.” *Id.* at 1248. Similarly, although a majority has yet to decide the issue, the only two Justices of Alaska’s Supreme Court to address the question to date have recognized that article VIII of Alaska’s Constitution protects “individual Alaskans’

constitutional right to a livable climate.” *Sagoonick v. Alaska*, 503 P.3d 777, 811 (Alaska 2022) (Maassen & Carney, JJ., dissenting in part).

b. Pennsylvania’s Due Process Rights Also Provide Fundamental Substantive Protections Against Government Policies and Conduct That Worsen the Climate Crisis.

Climate change presents profound threats to the lives, health, and safety of Pennsylvanians. Accordingly, the “inherent and infeasible rights” to enjoy “life and liberty” under article I, section 1 of Pennsylvania’s Constitution also restrict the government from taking actions that worsen the climate crisis and threaten the lives and liberties of Pennsylvanians. As such, the ERA should be construed *in pari materia* with article I, section 1 to support the conclusion that the ERA provides substantive protections against harms associated with climate change.

Substantive due process protections for health and safety are deeply rooted, tracing their lineage from the Magna Carta through Sir Edward Coke’s Institutes of the Laws of England and Blackstone’s Commentaries. *Den ex dem. Murray v. Hoboken Land & Imp. Co.*, 59 U.S. 272, 276 (1855). Citing Coke, Blackstone traced to the Magna Carta the “absolute rights” of persons, first among which is “personal security” which consists of a “person’s legal and uninterrupted enjoyment of his life, his limbs, his body, his health,” including “preservation of” a person’s “health from such practices as may prejudice or annoy it.” 1 William Blackstone, Commentaries on the Laws of England 123, 125 (emphasis added); *Jensen v. Union Pac. Ry. Co.*, 21 P. 994, 995 (Utah 1889) (tracing life and liberty protections to the Magna Carta,

through Coke). John Locke, whose work was foundational to the Framers, wrote that “health” is included among a person’s inalienable natural rights. John Locke, Second Treatise of Government 2.6 (1690).

United States Supreme Court jurisprudence has long recognized fundamental due process interests in health and safety, including under the fundamental rights of bodily integrity, *e.g.*, *Rochin v. California*, 342 U.S. 165 (1952), and personal security, *e.g.*, *Ingraham v. Wright*, 430 U.S. 651 (1977). In *Youngberg v. Romeo*, the Court explicitly “recognized that there is a constitutionally protected liberty interest in safety” because “personal security constitutes a ‘historic liberty interest’ protected substantively by the Due Process Clause.” 457 U.S. 307, 315, 318 (1982) (quoting *Ingraham*, 430 U.S. at 673).

Because every additional ton of climate pollution brings mounting harms to the health and safety of Pennsylvanians, government actions that worsen the climate crisis trigger the protections for life and liberty enshrined in Pennsylvania’s Constitution, as well as the ERA. Indeed, that due process rights protect against the harmful effects of fossil fuel pollution is not a new concept in Pennsylvania jurisprudence. In his *Robinson Twp.* concurrence, Justice Baer recognized that the environmental harms from fossil gas development implicate Pennsylvanians’ substantive due process rights. 83 A.3d at 1001 (Baer, J., concurring).

There is growing precedent from courts across the country recognizing that the harms of climate change implicate fundamental due process rights. For instance,

in *Held v. Montana*, the district court ruled that Montana’s pro-fossil fuel policies infringed on youths’ fundamental rights to health and safety. *Held v. Montana*, No. CDV-2020-307, Order Granting Mots. for Certification of Orders as Final, 6 (Mont. 1st Jud. Dist. Ct. Sep. 18, 2023), *aff’d under fundamental right to healthful environment and stable climate system, Held*, 560 P.3d at 1249, 1258–60. In *Matter of Hawai‘i Electric Light Co., Inc.*, then-Chief Justice Wilson wrote that “the right to a life-sustaining climate system is also included in the due process right to life, liberty, and property.” 526 P.3d at 337 (Wilson, J., concurring). Justice Wilson reasoned that “[c]limate change is a human rights issue at its core; not only does it inordinately impact young people and future generations, but it is also a profound environmental injustice disproportionately impacting native peoples.” *Id.* at 342. Similarly, in *Juliana v. United States*, the district court wrote that “where a complaint alleges governmental action is affirmatively and substantially damaging the climate system . . . it states a claim for a due process violation.” 217 F. Supp. 3d 1224 (D. Or 2016), *rev’d on other grounds*, 947 F.3d 1159 (9th Cir. 2020).

c. Courts Around the World Have Recognized that Climate Change Implicates Fundamental Human Rights.

Similarly, there is ample precedent from courts of other countries recognizing that climate pollution implicates fundamental human rights. In *Mathur v. His Majesty the King*, the Ontario Superior Court ruled that claims challenging Ontario’s climate policy implicated fundamental rights to life, liberty, and security of the

person. 2023 ONSC 2316, No. CV-19-00631627-0000, ¶¶ 106, 112, 119–20 (Ont. Super. Ct. Apr. 14, 2023). Similarly, in *La Rose v. His Majesty the King*, Canadian Federal Court of Appeals ruled that claims challenging Canada’s climate policy stated claims for violation of fundamental rights to life, liberty, and security of the person. 2023 FCA 241, A-289-20, ¶ 117 (Can. Fed. Ct. App. 2023). Likewise, India’s Supreme Court ruled in *M.K. Ranjitsinh & Ors. v. Union of India & Ors.* that climate change implicates the fundamental rights to life and health. 2024 INSC 280 (Sup. Ct. India 2024). In *Stichting Urgenda v. Netherlands*, the Supreme Court of the Netherlands ruled that “[c]limate change threatens human rights” and that “[i]n order to ensure adequate protection from the threat to those rights resulting from climate change, it should be possible to invoke those rights against individual states.”) No. 19/00135, ¶¶ 5.7.9 (Neth. Sup. Ct. Dec. 20, 2019). In *Neubauer v. Federal Republic of Germany*, the German Federal Constitutional Court recognized that “[t]he state’s duty of protection . . . also includes the duty to protect life and health against the risks posed by climate change.” Order, No. BvR 2656/18/1, BvR 78/20/1, BvR 96/20/1, BvR 288/20, ¶ 148 (Ger. Fed. Const. Ct. Mar. 24, 2021), *see also id.* ¶ 99. In *Leghari v. Federation of Pakistan*, the Lahore High Court wrote that “on a legal and constitutional plane [climate change] is clarion call for the protection of fundamental rights of the citizens.” W.P. No. 25501/2015, Order, ¶ 6 (Lahore High Ct. of Lahore, Pak. Sep. 4, 2015).

International courts have also recognized that protection against climate harms is a matter of fundamental human rights. In *Verein KlimaSeniorinnen Schweiz v. Switzerland*, the European Court of Human Rights ruled that the right to private and family life and home under Article 8 of the European Convention on Human Rights encompasses “a right for individuals to effective protection by the State authorities from serious adverse effects of climate change on their life, health, well-being and quality of life.” No. 53600/20, Judgment, ¶ 519 (Eur. Ct. H.R. Apr. 9, 2024). The Inter-American Court of Human Rights has similarly recognized that “States have a heightened duty to protect children against risks to their health produced by the emission of polluting gases that contribute to climate change.” *Inhabitants of La Oroya v. Peru*, Inter-Am Ct. H.R. (ser. C) No. 511, Judgment, ¶ 143 (Nov. 27, 2023) (unofficial translation).

This growing chorus of courts the world over recognizing that the harms of climate change implicate fundamental human rights is in harmony with the protections provided in Pennsylvania’s Constitution.

CONCLUSION

Climate change profoundly threatens Pennsylvania’s public natural resources and the health and safety of Pennsylvanians. Thus, when the Commonwealth pursues policies or takes actions that worsen the climate crisis, such as approving new fossil fuel infrastructure, it implicates Pennsylvanians’ substantive fundamental rights under *both* the ERA and due process. This Court should remand so that the PUC can

perform a constitutionally sound review of the climate repercussions of the Project and reach a decision consistent with the substantive protections of fundamental rights guaranteed in Pennsylvania's Constitution.

Respectfully submitted this 26th day of February, 2025,

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CERTIFICATE OF WORD COUNT

The undersigned hereby certifies that the foregoing Brief of *Amici Curiae* Our Children's Trust and Mountain Watershed Association In Support of Petitioners complies with the length limitation in Pa. R.A.P. 531(b)(3) in that it contains 4,035 words, excluding the supplementary matter exempted by Pa. R.A.P. 2135(b).

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Dated: February 26, 2025

/s/ Melissa Marshall

Melissa Marshall (PA I.D. No. 323241)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Brief of *Amici Curiae* Our Children's Trust and Mountain Watershed Association In Support of Petitioners was filed electronically using the PACFile system. Service will be made on the persons and in the manner set forth on the Proof of Service generated by the PACFile system, which service satisfies the requirements of Pa. R.A.P. 121.

Dated: February 26, 2025

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