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**IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH**

NATALIE ROBERTS; et al.,

Plaintiffs,

vs.

DEPARTMENT OF NATURAL
RESOURCES, BOARD OF OIL, GAS,
AND MINING; et al.,

Defendants.

**MEMORANDUM OPPOSING MOTION
TO DISMISS**

Case No.: 250909533

Judge Laura S. Scott

***Hearing Requested Pursuant to
Utah Rule of Civil Procedure 7(h)***

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INTRODUCTION

Plaintiffs are ten Utah youth and children who have standing to bring this action to protect their fundamental rights to life, health, and safety because Defendants’ issuance of oil and gas permits has placed them in a health emergency necessitating judicial relief. Due to localized air and climate pollution caused by Defendants’ actions, Plaintiffs live in some of the worst air quality in the nation and face increasingly dangerous climate disruptions, including elevated temperatures and deadly heatwaves, frequent and severe wildfires and smoke, exceptional drought, exacerbated medical conditions, and increased health risks.¹

This action follows the Utah Supreme Court’s decision in *Natalie R. v. State*, 2025 UT 5, 567 P.3d 550, in which many of the Plaintiffs here first filed suit to protect their fundamental rights to life and health from a prior mandate that Defendants “promote the development” of “natural gas, coal, oil, oil shale, and oil sands”—as previously codified in Utah Code section 79-6-301(1)(b)(i). The Court ruled in *Natalie R.* that 2024 legislative amendments materially changed section 79-6-301, altering the practical and legal relationship between the parties and mooting Plaintiffs’ claims. *Id.* ¶¶25-28. The Court held the amendments “created a new state policy of developing energy resources and planning an energy future ‘with a focus on human well-being and quality of life,’” *id.* ¶28, and that, under the amendments, Defendants have express authority to consider “the environmental impact, including emissions” of their permitting decisions and “broad latitude” to “decide that, due to the threat of climate change, it would be in the public’s best interest to phase out” fossil fuel development by denying new permits. *Id.* ¶¶28, 36, 44 n.6. The Court thus opened the door for Plaintiffs to challenge “the constitutionality of any specific

¹ Compl. ¶¶2, 14-72.

state action, such as a granted permit or other regulatory decision.” *Id.* ¶¶5, 49-59. As Defendants concede, Plaintiffs have done so here.²

Defendants’ “future conduct” under the 2024 amendments is no longer “hypothetical.” *Id.* ¶48. Since the Supreme Court’s decision on March 20, 2025, Defendants issued more than 300 permits for oil and gas development (the “Challenged Permits”),³ and continue to issue new permits every month, sometimes as often as every day, with no consideration of the resulting emissions, ensuing harms, or alternatives.⁴

Defendants’ issuance of the Challenged Permits is substantially harming Plaintiffs’ health and safety and taking years off their lives, infringing their fundamental rights to life, health, and safety under Utah’s inalienable rights and due process clauses.⁵ Defendants’ conduct is not narrowly tailored to achieve any compelling government interest.⁶ The Challenged Permits authorize levels of fossil fuel development that are not necessary for providing energy, or any other government interest, because technologically and economically feasible alternatives are readily available to meet all energy needs and to foster economic activity.⁷ By issuing the Challenged Permits without consideration of resulting emissions, ensuing harms, or alternatives—despite their constitutional and statutory duty and authority to do so, as recognized in *Natalie R.*—Defendants are also violating Plaintiffs’ procedural due process rights.⁸

² MTD 4.

³ Plaintiffs have voluntarily dismissed their challenge to the single coal mining permit previously included in the Challenged Permits listed in Appendix A to the Complaint. *See* Plaintiffs’ Rule 41 Notice. The remaining Challenged Permits consist entirely of oil and gas permits.

⁴ Compl. ¶¶6, 80, 82-83, 92, Appendix A.

⁵ Compl. ¶¶184-207.

⁶ Compl. ¶¶194, 206.

⁷ Compl. ¶85, 170-71, 176, 194-95, 206-07.

⁸ Compl. ¶¶208-15.

This Court should deny Defendants’ motion to dismiss because each of their arguments lacks merit. First, Defendants point to no available administrative processes through which Plaintiffs could have asserted constitutional claims against the Challenged Permits. Plaintiffs have dismissed the single coal mining permit previously included in this case. Defendants’ administrative exhaustion arguments with respect to the coal permit are now moot and the Challenged Permits are governed by a separate statutory scheme that provides no avenue for exhausting remedies. Second, Defendants’ redressability arguments disregard *Natalie R.*’s ruling that courts must “accept as true that reducing fossil fuel development would slow climate change and thereby reduce its adverse health impact on the youth plaintiffs.” 2025 UT 5, ¶31. Defendants dispute the very existence of Plaintiffs’ fundamental rights and their application to Defendants’ permitting practices, and disclaim any authority to consider the harms resulting from such conduct. It thus defies reason that a ruling for Plaintiffs would not affect Defendants’ permitting processes and resulting outcomes. Third, Plaintiffs’ fundamental rights to life, health, and safety are well-grounded in deeply rooted and explicit protections under Utah’s inalienable rights and due process provisions. There is no exception to these protections for fossil fuels. Finally, Plaintiffs’ claims raise no nonjusticiable political question. Indeed, courts have a broad “duty” to “safeguard the [constitutional] rights of the individual whenever such rights are invaded from whatever source.” *State v. Holtgreve*, 200 P. 894, 900 (Utah 1921).

LEGAL STANDARD

“A dismissal is a severe measure[.]” *Colman v. Utah State Land Bd.*, 795 P.2d 622, 624 (Utah 1990). On a motion to dismiss, courts must “accept[] as true the factual allegations of the complaint and draw[] all inferences in the plaintiff’s favor.” *Hunter v. Sunrise Title Co.*, 2004 UT 1, ¶6, 84 P.3d 1163 (citation omitted). Courts may dismiss only if “it is clear that a party is not

entitled to” any “relief under any state of facts which could be proved in support of its claim.” *Colman*, 795 P.2d at 624. “[I]f there is any doubt about whether a claim should be dismissed” the “issue should be resolved in favor of giving the party an opportunity to present its proof.” *Id.* at 624. “[A]llegations in a complaint should be construed liberally and against a motion for failure to state a claim[.]” *DeBry v. Noble*, 889 P.2d 428, 443 (Utah 1995).

ARGUMENT

I. **PLAINTIFFS PROPERLY BRING THEIR CONSTITUTIONAL CLAIMS DIRECTLY TO THIS COURT**

A. **No Administrative Process Exists for Review of Plaintiffs’ Claims**

Plaintiffs had no obligation or opportunity to participate in the more than 300 administrative proceedings for oil and gas permits Defendants have issued since the Utah Supreme Court recognized their authority to deny permits based on resulting harms. This Court “has subject matter jurisdiction over a legal claim unless adjudicative authority for that claim is specifically delegated to an administrative agency,” in which case, under the Utah Administrative Procedures Act (UAPA), a “party seeking relief must exhaust all administrative remedies available before seeking judicial review.” *Ramsay v. Kane Cnty. Hum. Res. Special Serv. Dist.*, 2014 UT 5, ¶9, 322 P.3d 1163 (citations and quotation marks omitted). “[T]o determine whether adjudicative authority has been delegated,” courts “look to the plain language of the applicable statute.” *Id.* The statutes Defendants cite come nowhere near the express, specific delegation of claims Utah’s courts require. *Compare id.* ¶10 (Utah Code § 49-11-613 required “person who disputes a benefit, right, obligation, or employment right under” Utah Retirement Act “shall request a ruling by the executive director”) with Utah Code §§ 40-6-4(1)(b) (Board is policy-making body for Division), 40-6-5(1) (Board has jurisdiction to enforce Utah Oil and Gas Act), 40-6-5(3)(b) (Board regulates “spacing and location” of wells), 40-6-6 (spacing and location requirements).

These statutes provide no pathway for agency adjudicatory proceedings in which Plaintiffs could protect their rights. *Nebeker v. Utah State Tax Comm'n*, 2001 UT 74, ¶14, 34 P.3d 180 (exhaustion requirement depends on existence of “applicable administrative remedies”). Opportunities for administrative review under the applicable statutes and regulations are limited to entities with affected fossil fuel property interests. Indeed, Defendants concede participation in their processes is centered on the establishment of drilling units.⁹ According to their own description of such proceedings, Plaintiffs could not contest the constitutionality of the Challenged Permits there.¹⁰ Defendants further concede the establishment of drilling units pertains only to the “spacing and location of wells” and that the actual *issuance of permits* to drill and extract oil and gas—the subject of Plaintiffs’ claims—is subsequent and separate agency action, which similarly lacks any process under which Plaintiffs could assert their rights. MTD 5-7; Utah Code § 40-6-6 (governing establishment of drilling units); Utah Admin. Code R649-3-4 (governing issuance of permits).¹¹ Defendants’ violation of Plaintiffs’ constitutional rights does not arise from the spacing and location of wells, but from Defendants’ authorization of production of fossil fuels through permit issuance.¹² Yet regulations permit intervention only in “formal adjudicative proceedings,” Utah Admin. Code R641-103-100(110), and Defendants do not hold formal proceedings in granting permit applications. MTD 7 (“If the APD is complete and complies with Division’s rules and the Board’s orders, the Division must approve” it.) (citing Utah Admin. Code R649-3-4(3)).

⁹ MTD 5-7.

¹⁰ MTD 5-7.

¹¹ Because subsequent permit issuance is the agency action authorizing extraction and resulting harms to Plaintiffs, orders establishing drilling units would also not be “final agency action” under the UAPA for purposes of Plaintiffs’ claims, precluding appeal to courts. Utah Code § 63G-4-403(2)(c).

¹² Compl. ¶¶193, 205.

Finally, Defendants suggest Plaintiffs could have initiated an unspecified request for agency action to seek “affirmative relief, such as rulemaking or appealing a Division determination.”¹³ However, they offer no supporting authority for the proposition that a petition for rulemaking is a pre-requisite to challenging the constitutionality of affirmative government conduct and Defendants’ regulations only allow entities with fossil fuel property interests to submit requests for agency action protesting permits, and on limited bases. Utah Admin. Code R649-3-4(4). As such, Plaintiffs’ constitutional claims are properly before this Court.

B. Plaintiffs’ Claims Fall Under Exceptions to Exhaustion

Even if Plaintiffs could have participated in the delineation of drilling units, Plaintiffs’ constitutional claims fall under clear exceptions to exhaustion because available administrative remedies are inadequate, Utah Code § 63G-4-401(2)(b), and because exhaustion would be “futile” and “serve no purpose.” *Ramsay*, 2014 UT 5, ¶14.

“[T]he guiding inquiry for adequacy of the remedy is whether the party can be made whole by the administrative remedies available.” *Id.* ¶15. Plaintiffs seek a declaration of rights outside of the agency’s authority to make and thus need not exhaust administrative remedies. *Salt Lake City Corp. v. Haik*, 2019 UT App 4, ¶38, 438 P.3d 913. The Board’s authority to issue declarations is limited to determining “the applicability of any statute, rule, regulation or order to the operations or activities of” the person requesting the ruling. Utah Admin. Code R641-111-100. Plaintiffs’ claims do not involve questions of “applicability of any statute, rule, regulation or order.” They allege Defendants’ very issuance of the Challenged Permits violates their constitutional rights.

Requiring Plaintiffs to proceed through administrative processes would also be futile because Defendants have already made clear what the outcome of those proceedings would be.

¹³ MTD 6 (citing Utah Admin. Code R641-104-133).

Defendants have consistently taken the position, here and in *Natalie R.*, that Plaintiffs have no fundamental rights that could be implicated by their permitting decisions and that substantive due process does not extend to fossil fuels generally.¹⁴ Therefore, any administrative proceedings would not result in Defendants “mak[ing] a factual record,” applying “expertise,” or “correcting [their] own errors so as to moot [this] judicial controvers[y].” *Tooele Cnty. v. Erda Cmty. Ass’n*, 2022 UT App 123, ¶17, 521 P.3d 872. Similarly, Defendants represented to Plaintiffs’ counsel that they have no authority to consider the emissions or harms to Plaintiffs resulting from their permitting decisions.¹⁵ Moreover, Defendants’ regulations require oil and gas permits be approved automatically if they are “complete and compl[y] with the Division’s rules and the Board’s orders.” MTD 7 (citing Utah Admin. Code R649-3-4(3)). Only the Court can declare how the existence and protection of Plaintiffs’ fundamental rights constrain the Board’s implementation of their authority to issue oil and gas permits.

C. Exhausting Remedies Through Piecemeal Administrative Appeals Would Foreclose Meaningful Judicial Review of Plaintiffs’ Constitutional Claims

If Plaintiffs were required to exhaust remedies through piecemeal challenges to individual agency actions under the UAPA, it would violate Plaintiffs’ procedural due process rights and Utah’s open courts provision. Utah Const. art. I, § 11; *Miller v. USAA Cas. Ins. Co.*, 2002 UT 6, ¶38, 44 P.3d 663 (“The analysis to determine whether” a claimant has been denied their “constitutional right to a day in court” is “the same under both the open courts provision and the

¹⁴ MTD 13-18; *See also* Defendants’ Motion to Dismiss in *Natalie R. v. State*, No. 220901658, 22-24, (Third Jud. Dist. Ct. for Salt Lake Cnty. May 6, 2022) (attached as Exhibit A).

¹⁵ *See* Declaration of Brianna Rosier-Kabwika (attached as Exhibit B). On a motion to dismiss for lack of subject matter jurisdiction under Utah Rule of Civil Procedure 12(b)(1), this Court “may consider matters outside the pleadings,” without “converting the motion into one for summary judgment” provided “the opposing party has the opportunity to rebut that evidence.” *Amundsen v. Univ. of Utah*, 2019 UT 49, ¶4 n.1, 448 P.3d 1224.

due process clause.”). These provisions “ensure[] that courts are to be accessible to all for the resolution of their disputes and make[] clear that this right to come into court is a fundamental value of our governmental compact.” *Jeffs v. Stubbs*, 970 P.2d 1234, 1250 (Utah 1998). Statutory limitations on judicial review, like those in the UAPA are inapplicable where, as here, they would foreclose meaningful review of constitutional claims. *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 496 (1991); Utah Code § 63G-4-401.

Courts consider three due process factors: (1) the private interest affected; (2) the risk of erroneous deprivation of that interest through the procedures used, and the probable value of additional or substitute safeguards; and (3) the government’s interest, including the burdens additional or substitute safeguards would entail. *In re Baby Girl T.*, 2012 UT 78, ¶17, 298 P.3d 1251 (citing *Mathews v. Eldridge*, 424 U.S. 319, 339-50 (1976)). Each of these factors favors Plaintiffs.

First, the private interest at stake is of the highest importance because Plaintiffs allege infringement of fundamental rights.¹⁶

Second, there is risk of erroneous deprivation of Plaintiffs’ rights if they must proceed through administrative processes and appeals, because the UAPA only allows for isolated challenges to individual agency actions.¹⁷ Here, Plaintiffs do not contend that any single agency action in isolation violates their constitutional rights; rather, the aggregate effect of the Challenged Permits is causing their constitutional harms. Compl. ¶¶193, 205; see *Juliana v. United States*, 947

¹⁶ Compl. ¶¶184-215

¹⁷ Utah Code § 63G-4-401(1), (3)(a) (“A party aggrieved may obtain judicial review of final agency action” only if filed within “30 days”). The U.S. Supreme Court has interpreted identical “final agency action” language in the federal APA as requiring a “case-by-case approach” limited to determining the effect of a “specific final agency action” and as not allowing challenges to “many individual actions.” *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 893-94 (1990); *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 64-65 (2004).

F.3d 1159, 1167 (9th Cir. 2020) (requiring plaintiffs who challenged the “totality of various government actions” to proceed through piecemeal administrative processes and appeals “would bar [them] from challenging [the] violations of [their] constitutional rights”). Since the UAPA does not permit challenges to multiple agency actions that cumulatively cause harm, requiring exhaustion through piecemeal administrative appeals would render deprivation of Plaintiffs’ constitutional rights inevitable.

Third, the government’s interest in administrative efficiency favors litigating Plaintiffs’ claims as a single action rather than a myriad of challenges to hundreds of permits, which would undoubtedly prove costly, inefficient, and unduly burdensome for all parties involved, including the courts. In sum, every factor favors proceeding with Plaintiffs’ claims as pleaded to avoid a procedural due process violation.

The doctrine of exhaustion of administrative remedies does not apply here.

II. PLAINTIFFS HAVE STANDING

Utah’s traditional standing test is “not identical” to and is more lenient than the one used in federal courts. *S. Utah Wilderness All. v. Kane Cnty. Comm’n*, 2021 UT 7, ¶17, 484 P.3d 1146. Plaintiffs first must assert an “actual or potential” injury[.]” *Brown v. Div. of Water Rts. of Dep’t of Nat. Res.*, 2010 UT 14, ¶18, 228 P.3d 747. “Second, they must allege a causal relationship between their injury and the challenged actions. And third, the relief requested must be substantially likely to redress the injury claimed.” *S. Utah Wilderness All.*, 2021 UT 7, ¶23 (cleaned up).

Defendants do not dispute the sufficiency of the allegations that Plaintiffs are individually injured,¹⁸ and that Defendants’ permitting of fossil fuel development through the Challenged

¹⁸ Compl. ¶¶14-72.

Permits causes and worsens their injuries.¹⁹ Defendants contest standing solely on redressability grounds, overstating Plaintiffs’ burden, disregarding controlling precedent, relying on inapposite cases, and ignoring Plaintiffs’ factual allegations.

Redressing Plaintiffs’ constitutional injuries does not require fully solving Utah’s air and climate crises.²⁰ In *Natalie R.*, the Utah Supreme Court ruled that, on a motion to dismiss, Utah’s courts must “accept as true that reducing fossil fuel development” would reduce air pollution and “slow climate change and thereby reduce its adverse health impacts on the youth plaintiffs.” 2025 UT 5, ¶31. That ruling controls here. Plaintiffs’ redressability burden at this stage is to plead allegations from which the Court can conclude the harms from Defendants’ conduct would be at least somewhat reduced by a ruling in Plaintiffs’ favor. *Jenkins v. Swan*, 675 P.2d 1145, 1153 (Utah 1983) (redressability requires that an “increased” adverse impact from government conduct would likely “be relieved” if the “governmental action is declared unconstitutional”). Even under federal standing requirements, which are more onerous than Utah’s, only partial redressability is required.²¹ See also *Held v. Montana*, 560 P.3d 1235, 1254 (Mont. 2024) (“[T]he question is

¹⁹ Compl. ¶¶93-94, 103, 149, 161, 168, 193, 205,

²⁰ *Contra* MTD 20-21 (citing *Juliana*, 947 F.3d at 1171). Defendants’ reliance on *Juliana* is misplaced because the Ninth Circuit was merely “skeptical,” based on the summary judgment record, whether a favorable declaratory judgment would redress the plaintiffs’ injuries. 947 F.3d at 1171. The ruling was that the plaintiffs’ request for a comprehensive plan to combat climate change was beyond federal courts’ power to order and oversee. *Id.* Plaintiffs here request no such relief and their factual allegations—not the findings of the Ninth Circuit on the summary judgment record in a different case—must be taken as true. *Contra* MTD 20 n.30.

²¹ *Uzuegbunam v. Preczewski*, 592 U.S. 279, 291 (2021) (“the ability ‘to effectuate a partial remedy’ satisfies the redressability requirement”); *Gutierrez v. Saenz*, 606 U.S. 305, 319 (2025) (invalidating conduct challenged is all redress requires, even if other barriers to full remediation of injuries remain); *Utah v. Evans*, 536 U.S. 452, 463-64 (2002); *Diamond Alt. Energy, LLC v. EPA*, 606 U.S. 100, 111 (2025) (“causation and redressability, are usually ‘flip sides of the same coin’”).

whether legal relief can effectively alleviate, remedy, or prevent Plaintiffs’ constitutional injury, not whether” it “will effectively stop or reverse climate change.”).

Plaintiffs’ allege²² that emissions resulting from the Defendants’ permitting practices are a significant cause of Utah’s air and climate crises,²³ taking years off Plaintiffs’ lives and substantially endangering their health and safety.²⁴ A ruling for Plaintiffs would at least partially relieve their injuries because, as Plaintiffs allege, and the Supreme Court has recognized, any reduction in fossil fuel production and resulting emissions will “avoid locking in more heat and more climate disruption that harms Plaintiffs” and “lead to immediate health benefits to the Plaintiffs.”²⁵ *Natalie R.*, 2025 UT 5, ¶31.

Defendants concede Plaintiffs have alleged the “specific government conduct that was missing in *Natalie R.*,”²⁶ thus providing sufficient context to “appreciate the consequences that would flow from the requested relief.” 2025 UT 5, ¶52. A ruling on the constitutionality of Defendants’ conduct in issuing the Challenged Permits is likely to change Defendants’ permitting practices and the resulting outcomes because declaratory relief changes the “legal status” of the challenged conduct, which suffices for redressability, *Evans*, 536 U.S. at 463-64, and carries a presumption that governmental officials will “abide by an authoritative interpretation” of “the constitution[.]” *Id.* Indeed, “declaratory judgments” are a “well-recognized and effective means of protecting important constitutional rights,” *Spackman v. Bd. of Educ. of Box Elder Cnty. Sch. Dist.*,

²² If this Court finds Plaintiffs’ allegations deficient in any respect to establish subject matter jurisdiction or that they fail to state a claim, Plaintiffs respectfully request leave to amend. Utah R. Civ. P. 15(a)(2).

²³ Compl. ¶¶2, 69-71, 73, 112, 193, 205.

²⁴ Compl. ¶¶2, 69-71.

²⁵ Compl. ¶¶107, 150; *Id.* ¶114 (“More permitting of fossil fuel development by Defendants will cause more fossil fuel pollution and more harm to Plaintiffs.”).

²⁶ MTD 4.

2000 UT 87, ¶18, 16 P.3d 533. A declaratory judgment establishes that defendants’ conduct is unconstitutional, and “ensures” that defendants “cannot engage in similar” “conduct toward [plaintiffs] or anyone else in the future.” *Anatol Zukerman & Charles Krause Reporting, LLC v. U.S. Postal Serv.*, 64 F.4th 1354, 1366-67 (D.C. Cir. 2023).

This Court’s determination of the existence, contours, and violation of Plaintiffs’ rights would provide meaningful redress. Defendants dispute the very existence of Plaintiffs’ fundamental rights and contend that the protections for Plaintiffs’ lives and liberties under Utah’s Constitution are inapplicable to their fossil fuel permitting activities.²⁷ Similarly, Defendants state they lack any authority to consider emissions in their permitting decisions.²⁸ Just as in *Utah Physicians for a Healthy Environment v. Utah Department of Natural Resources*, this Court’s determination of the contours of Plaintiffs’ rights, and whether Defendants’ permitting practices violate them, “will serve a useful purpose in resolving an important dispute,” and would, practically and as a matter of law, change both Defendants’ decision-making processes and the outcomes of their permitting decisions. No. 230906637, Ruling and Order Re: Motions to Dismiss, 14 (Third Jud. Dist. Ct., Salt Lake Cnty, Utah, Mar. 27, 2025).²⁹

If Plaintiffs prevail on their procedural due process claims, a judicial declaration would clarify that Defendants must account for resulting emissions, ensuing harms to health and safety, and alternative means of providing energy in their permitting decisions.³⁰ If they prevail on their fundamental rights claims, a judicial declaration of the contours of their rights would clarify the substantive constraints governing Defendants’ permitting decisions, leading to different outcomes

²⁷ MTD 13 (arguing “substantive due process does not extend” to “fossil fuel production or alleged pollution”).

²⁸ See Rosier-Kabwika Decl.

²⁹ Hereinafter “*UPHE*,” Attached as Exhibit C.

³⁰ Compl. p. 53.

from the status quo, in which “Defendants have never denied a permit for fossil fuel development” based on the “resulting fossil fuel pollution and ensuing harms to health and safety.”³¹ A decision for Plaintiffs would clarify Defendants’ permitting decisions must be narrowly tailored to meet a compelling government interest.³² The factual record would inform the application of constitutional scrutiny and the Court’s determination of rights and violations. Upon a finding that the Challenged Permits are unconstitutional, it would be well within this Court’s power to order Defendants to use their existing statutory authority to review the Challenged Permits and ensure that fossil fuel development thereunder, and in their future permitting decisions, is narrowly tailored, thus reducing unnecessary development and resulting harms to Plaintiffs.

III. PLAINTIFFS HAVE STATED CLAIMS FOR VIOLATIONS OF FUNDAMENTAL RIGHTS UNDER UTAH’S CONSTITUTION

Plaintiffs’ claims rest on well-established, fundamental protections for their lives, health, and safety under Utah’s Constitution. Defendants’ attempts to recast Plaintiffs’ asserted fundamental rights—and deny their existence and applicability—contradict the Utah Supreme Court’s established method of constitutional interpretation, contravene the explicit text and original public meaning of Utah’s inalienable rights and due process provisions, and conflict with ample and growing precedent recognizing that harms to youth from fossil fuel policies implicate fundamental rights and are subject to judicial review.

A. Life and Liberty Are Explicit Rights in Utah’s Constitution Applicable to Defendants’ Endangerment of Plaintiffs’ Health, Safety, and Longevity

Defendants accuse Plaintiffs of asserting a fundamental “right to be free from fossil fuel production,” and argue that Utah’s fundamental constitutional protections of “life” and “liberty”

³¹ Compl. ¶83; Rosier-Kabwika Decl.

³² Compl. p. 53.

do not apply because the method of government interference involves fossil fuels.³³ Defendants’ recasting of Plaintiffs’ rights fails because the “level of generality at which an asserted right is framed” is only a consideration where a party claims infringement of an *unenumerated* liberty interest that has “not previously received constitutional protection.” *Matter of Adoption of K.T.B.*, 2020 UT 51, ¶¶70, 472 P.3d 843; *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (“careful description” requirement for asserted rights is for unenumerated “fundamental liberty interest[s]”). The right to life is explicit in Utah’s Constitution and encompasses deeply rooted protections for health and safety, which are also well-established fundamental liberty interests. *See* Section III.B.³⁴

Moreover, Utah’s courts neither define constitutional rights nor limit their applicability by the “particular form of governmental interference.” *Planned Parenthood Ass’n of Utah v. State*, 2024 UT 28, ¶115, 554 P.3d 998. The Utah Supreme Court has rejected that methodology because it would cause courts to “entirely overlook the substantial [constitutional] interests at the heart” of cases involving fundamental rights. *K.T.B.*, 2020 UT 51, ¶52; *accord, e.g., Guertin v. Michigan*, 912 F.3d 907, 919 (6th Cir. 2019) (“To show that the government has violated one’s [constitutional right], a plaintiff need not establish any constitutional significance to the means by which the harm occurs.”) (cleaned up); *id.* (constitutional protections for health and safety apply “regardless of the

³³ MTD 13.

³⁴ Plaintiffs are “master[s] of the complaint” who “control[] the claims to be litigated” and Defendants cannot transform them into ones “that were not pleaded[.]” *Utah Stream Access Coal. v. VR Acquisitions, LLC*, 2019 UT 7, ¶¶41-41, 439 P.3d 593. The non-binding cases on which Defendants rely in which courts rejected claims pleading rights not asserted here are inapposite. *See Aji P. v. Washington*, 480 P.3d 438 (Wash. Ct. App. 2021) (pleading “right to a healthful and pleasant environment”); *Clean Air Council v. United States*, 362 F.Supp.3d 237, 250 (E.D. Pa. 2019) (“right to a life-sustaining climate system”); *S.F. Chapter of A. Philip Randolph Inst. v. U.S. EPA*, No. C07-04936 CRB, 2008 WL 859985, at *7 (N.D. Cal. Mar. 28, 2008) (“right to be free of climate change pollution”); *Nat’l Sea Clammers Ass’n v. City of New York*, 616 F.2d 1222, 1238 (3d Cir. 1980) (“right to a pollution-free environment”); *Concerned Citizens of Neb. v. U.S. Nuclear Reg. Comm’n*, 970 F.2d 421, 427 (8th Cir. 1982) (“right to be free from non-natural radiation”).

manner” of government intrusion). In *K.T.B.*, the Court rejected the reframing of a “[m]other’s fundamental right to parent” as a “right to retain parental rights despite failing to comply with required procedure.” 2020 UT 51, ¶57. The Court explained that this overly narrow description “incorrectly define[d] the right” by reference to the form of government interference the mother was challenging. *Id.* ¶¶55, 57. Here, Defendants’ concoction of a “right to be free from fossil fuel production,” makes the same analytical error.

Indeed, if courts determined which rights were fundamental by reference to whether there is a deeply rooted history of protection from a particular form of government interference, it would eviscerate the inalienable rights and due process protections enshrined in Utah’s Constitution, rendering them inapplicable to new and changing circumstances, contrary to their original meaning and intent:

The fundamental interests of “life, liberty, and property” . . . were to be protected as societal and jurisprudential concepts of those terms evolved. For the law to freeze the meaning of those clauses as of one point in time would be to deny the essential meaning and purpose that was built into those clauses by the broad, expansive language that the Constitution uses.

DeBry, 889 P.2d at 435; *see also McGrew v. Indus. Comm’n*, 85 P.2d 608, 610 (Utah 1938). Utah’s constitutional rights were intended for adaptability for “future operation,” *People v. City Council of Salt Lake City*, 64 P. 460, 462-63 (Utah 1900), and courts have a “duty” to “safeguard the rights of the individual” “from whatever source.” *Holtgreve*, 200 P. at 900. This Court should reject Defendants’ attempt to place fossil fuels, which are nowhere mentioned in Utah’s Constitution, above its express restrictions and protections for the constitutional rights of children to life, health, and safety.³⁵

³⁵ Moreover, ample and growing precedent recognizes that harms from government fossil fuel policies implicate fundamental rights, including life, health, and safety. *E.g., Held v. Montana*, No. CDV-2020-307, Order Granting Mots. for Certification of Orders as Final, 6 (Mont. 1st Jud. Dist.

Defendants’ attempt to reframe and deny applicability of Plaintiffs’ fundamental rights “misunderstands[s] the way [Utah’s courts] apply constitutional guarantees. The Utah Constitution enshrines principles, not application of those principles.” *S. Salt Lake City v. Maese*, 2019 UT 58, ¶70 n.23, 450 P.3d 1092; Utah Const. art. I, § 27. Plaintiffs do not ask to “extend substantive due process” to include new fundamental rights.³⁶ They call for application of bedrock constitutional principles to new *facts*—under which Defendants’ ongoing conduct in authorizing unnecessary oil and gas permits poses an existential threat to the lives, health, and safety of Utah’s children.

B. Plaintiffs’ Rights Are Explicitly Protected Under Utah’s Constitution, Implicit in Ordered Liberty, and Deeply Rooted in History and Tradition

The fundamental principles underlying Plaintiffs’ claims are well-grounded in deeply rooted and explicit protections under Utah’s Constitution. The plain text of and the history and traditions underlying Utah’s inalienable rights and due process provisions demonstrate that the rights to “life” and “liberty” encompass fundamental protections against government conduct that substantially harms the health, safety, and longevity of children. Indeed, if Utah’s Constitution does not protect the life and health of children from substantial harm affirmatively caused by their government, Utah’s Declaration of Rights is a dead letter.

Ct. Sep. 18, 2023) (fossil fuel policy infringed youth’s fundamental rights to health and safety); *Juliana v. United States*, 217 F.Supp.3d 1224, 1250 (D. Or. 2016) (“[W]here a complaint alleges governmental action is affirmatively and substantially damaging the climate system in a way that will cause human deaths, shorten human lifespans” and “dramatically alter the planet’s ecosystem, it states a claim for a due process violation.”), *rev’d on other grounds*, 947 F.3d 1159 (9th Cir. 2020); *Matter of Hawai’i Electric Light Co., Inc.*, 526 P.3d 329, 337 (Haw. 2023) (Wilson, J., concurring) (“the right to a life-sustaining climate system is also included in the due process right to ‘life, liberty, [and] property’”); *Cecilia La Rose v. His Majesty the King*, 2023 FCA 241, A-289-20, ¶117 (Can. Fed. Ct. App. 2023); *M.K. Ranjitsinh & Ors. v. Union of India & Ors.*, 2024 INSC 280 (Sup. Ct. India 2024); *Stichting Urgenda v. Netherlands*, No. 19/00135, Judgment, ¶5.7.9 (Sup. Ct. Neth. Dec. 20, 2019); *KlimaSeniorinnen v. Switzerland*, App. No. 53600/20, Judgment (Grand Chamber) (Apr. 9, 2024).

³⁶ MTD 13.

The right to life explicitly protected by article I, sections 1 and 7 is the “most fundamental” right protected under Utah’s Constitution. *State v. Phillips*, 540 P.2d 936, 940 (Utah 1975), *disavowed on other grounds*, *State v. Taylor*, 664 P.2d 439 (Utah 1983). The “word[] ‘life,’” is a “constitutional term[], and” is “to be taken in [its] broadest sense.” *McGrew*, 85 P.2d at 610. As reflected in period dictionaries,³⁷ the common understanding of “life” at ratification of Utah’s Constitution, as today, encompassed the entirety of a person’s lifespan, *i.e.*, their longevity, as well as their health, or “vitality.” See Webster’s American Dictionary of the English Language (Chauncey A. Goodrich ed., 1895) (defining “life” as a person’s “vitality” and “the time from birth to death”); Universal Dictionary of the English Language (Robert Hunter & Charles Morris eds., N.Y.C., Peter Fenelon Collier 1899) (defining “life” as “the period from birth to death” of a human being, *i.e.*, a person’s longevity or lifespan); *see also Summit Water Distrib. Co. v. Utah State Tax Comm’n*, 2011 UT 43, ¶14, 259 P.3d 1055 (interpreting Utah’s Constitution by these dictionaries). Thus, the “plain import of” the term “as it would be understood by persons of ordinary intelligence and experience,” demonstrates that Utah’s explicit constitutional protection of the right to “life” guards against government conduct that significantly harms a person’s health, safety, and longevity. *Salt Lake City v. Ohms*, 881 P.2d 844, 850 n.14 (Utah 1994).

“By its terms,” article I, section 1 “prohibits government from infringing upon citizens’ ‘inherent and inalienable’ right[]” to “enjoy” life. *Jensen v. Cunningham*, 2011 UT 17, ¶62, 250 P.3d 465. In *Ray v. Wal-Mart Stores, Inc.*, the Court described the “inalienable right to enjoy and defend [one’s] li[fe]” under section 1 as an “unqualified right” and explained that this provision evinces a clear expression of preservation and protection of human life that is “so substantial and

³⁷ *Maese*, 2019 UT 58, ¶18 (“When we interpret constitutional language, we start with the meaning of the text as understood when it was adopted.”); *State v. Canton*, 2013 UT 44, ¶13, 308 P.3d 517 (the “‘starting point’ is the dictionary”).

fundamental that there can be virtually no question as to [its] importance[.]” 2015 UT 83, ¶¶19, 22, 24, 359 P.3d 614. In *Cunningham*, the Court ruled section 1 is self-executing and enforceable, meaning that it “articulates a rule sufficient to give effect to the underlying rights and duties intended by the framers.” 2011 UT 17, ¶¶59-62; *see also Ritholz v. City of Salt Lake*, 284 P.2d 702 (Utah 1955) (invalidating ordinance as violating article I, section 1).

The right to be free from substantial endangerment of health, safety, and longevity is deeply rooted in the history underlying article I, sections 1 and 7 and “so fundamental to our society and so basic to our constitutional order” that it is implicit in the concept of ordered liberty. *In re J.P.*, 648 P.2d 1364, 1375 (Utah 1982); *Berry v. Beech Aircraft Corp.*, 717 P.2d 670, 674 (Utah 1985) (tracing Utah’s life and liberty protections to Magna Carta, Coke, and Blackstone); *Jensen v. Union Pac. Ry. Co.*, 21 P. 994, 995 (Sup. Ct. of Terr. of Utah 1889). Citing Coke, Blackstone traced to the Magna Carta the “absolute rights” of persons, first among which is “personal security” which consists in 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. John Locke, whose work was likewise foundational to the Framers, wrote that “health” is included among a person’s inalienable natural rights. *Second Treatise of Government* 2.6 (1690). Utah’s Constitution “transplanted” these absolute rights from these “legal source[s]” into Utah’s due process and inalienable rights protections, bringing “the old soil with [them].” *Matter of Childers-Gray*, 2021 UT 13, ¶50, 487 P.3d 96.

Multiple lines of constitutional case law illustrate the fundamental nature of the rights to health, safety, and longevity. Utah’s Supreme Court recognizes that Utah’s Constitution provides “legal protection [for] a person’s bodily integrity[.]” *Malan v. Lewis*, 693 P.2d 661, 674 n.17 (Utah

1984), and that “[a]mong the historic liberties” is “a right to be free from, and to obtain judicial relief for, unjustified intrusions on personal security.” *Berry*, 717 P.2d at 680 (quoting *Ingraham v. Wright*, 430 U.S. 651, 673 (1977)). In *Wickman v. Fisher*, the Court ruled that policies that subject a person to conditions “inimical to the maintenance of the[ir] health” and safety, including, as applicable here, lack of fresh air and safe temperatures, raise “serious constitutional issues” under Utah’s due process clause. 629 P.2d 896, 898, 901 (Utah 1981). Though *Wickman* involved conditions of confinement, the principles are equally applicable here, where Defendants are causing conditions dangerous to Plaintiffs’ health and safety that require them to remain indoors and from which they cannot physically escape.³⁸ Indeed, the Court indicated in *Wickman* that these principles apply with greater force here, where there is no penal justification for imposing such conditions on Utah’s youth. 629 P.2d at 901 (“a jail door does not close off all protections of” the “Utah Constitution[]” and “neither is incarceration a justification for dissolving the protection” of “the due process clause”); *Youngberg v. Romeo*, 457 U.S. 307, 315-16 (1982) (“if it is” unconstitutional “to hold convicted criminals in unsafe conditions, it must be unconstitutional” to subject those “who may not be punished at all” to such “unsafe conditions”).³⁹

The deep roots of constitutional protections of health and safety are also evident in Utah’s common law and statutory history, providing “evidence about what the people of Utah would have

³⁸ Compl. ¶¶15, 20-22, 28-29, 33-34, 41-42, 48-49, 54-55, 61, 65.

³⁹ Federal precedent similarly supports the fundamental nature of rights to health, safety, and longevity. *E.g.*, *Rochin v. California*, 342 U.S. 165 (1952) (bodily integrity); *Ingraham*, 430 U.S. 651 (personal security); *Youngberg*, 457 U.S. at 315, 318 (“[T]here is a constitutionally protected liberty interest in safety” because “personal security constitutes a ‘historic liberty interest’”); *Washington v. Harper*, 494 U.S. 210, 237 (1990) (“Every violation of a person’s bodily integrity is an invasion of his or her liberty. The invasion is particularly invasive” where “it creates a substantial risk of permanent injury and premature death.”) (Stevens, J., concurring). Courts have taken it as a “given” that serious injuries to health “count as direct and substantial impairments of th[e] fundamental right to life.” *Browder v. City of Albuquerque*, 787 F.3d 1076, 1080 (10th Cir. 2015).

understood our state constitution to mean.” *Maese*, 2019 UT 58, ¶46. As early as 1870, Utah law provided a private right of action against “anything which is injurious to health[.]” Acts, Resolutions, & Mem’ls of the Terr. of Utah, § 8-2-249 (1870). Utah’s first code included both civil rights of action⁴⁰ and criminal penalties⁴¹ for harms to health, and safety. An 1899 statute provided:

Whatever is dangerous to human life or health, and whatever renders soil, air, water, or food impure or unwholesome, are declared to be nuisances and to be illegal, and every person, either owner, agent, or occupant, having aided in creating or contributing to the same, or who may support, continue, or retain any of them, shall be deemed guilty of a misdemeanor.

Comp. Laws 1907, § 1113x; Laws of Utah (1899), p. 66. In early Utah case law, nuisance protections were often used to protect against harms of pollution, including from fossil fuels. *See Kinsman v. Utah Gas & Coke Co.*, 177 P. 418, 418-19 (Utah 1918) (permitting nuisance suit against gas plant where the “air [was] polluted and made poisonous to such an extent” as to “cause sickness, such as nausea, headache”); *Wasatch Oil Refining Co. v. Wade*, 63 P.2d 1070 (Utah 1936) (permitting nuisance suit against oil refinery).

A right is fundamental where its protection is “one of the basic principles for which organized government is established.” *In re J.P.*, 648 P.2d at 1373. Here, the fundamental right to health and safety dates back to Roman times as a primary purpose for which government exists. Cicero, one of history’s first legal scholars, coined “*salus populi suprema lex esto*,” which means “the safety of the community is the highest law.” Gilmer, Cochran’s Law Lexicon 265 (5th ed. 1973). The Utah Supreme Court echoed this principle the year of statehood, *Holden v. Hardy*, 46

⁴⁰ Comp. Laws 1898, § 3506 (“Anything which is injurious to health” so “as to interfere with the comfortable enjoyment of life” is “a nuisance, and the subject of an action. Such action may be brought by any person” whose “personal enjoyment is lessened by the nuisance[.]”).

⁴¹ Comp. Laws 1898, § 4275 (“A public nuisance is a crime” consisting “in unlawfully doing any act, or omitting to perform any duty, which act or omission either— 1. Annoys, injures, or endangers the comfort, repose, health, or safety of three or more persons;” or “[i]n any way renders three or more persons insecure in life[.]”).

P. 756, 761 (Utah 1896) (“Solus populi supremalex”), and in *Olsen v. Hayden Holding Co.*, made clear that it “is the universally recognized right of the community in all civilized governments” to “be protected” against “impairment or imperilment” of “health” and “safety[,]”—“a protection which the government not only has a right to vouchsafe to the citizens, but which it is its duty to extend in the exercise of its police power.” 70 P.2d 463, 465 (Utah 1937). This legal history dictates that when government betrays its primary purpose by *actively* endangering the lives, health, and safety of children, it violates their rights.

IV. PLAINTIFFS’ CLAIMS PRESENT NO NONJUSTICIABLE QUESTION

Whether Defendants’ conduct in issuing the Challenged Permits violates Plaintiffs’ fundamental rights is a question squarely within judicial cognizance. The purpose of separating power is not to insulate and make the conduct of the executive branch unreviewable; it is to protect “individual rights and liberties” from “abuse of governmental power.” *In re Young*, 1999 UT 6, ¶74, 976 P.2d 581. Whether Defendants’ “actions pass constitutional muster is certainly a justiciable issue” for Utah’s courts to resolve on the merits. *Skokos v. Corradini*, 900 P.2d 539, 542 (Utah Ct. App. 1995).

A. Plaintiffs’ Claims Are Justiciable Under Utah’s Constitution

The justiciability of Plaintiffs’ claims is a matter for determination under Utah’s Constitution, not the test federal courts apply under *Baker v. Carr* to identify political questions under the U.S. Constitution. 369 U.S. 186 (1962).⁴²

⁴² The Utah Supreme Court has not imported the federal *Baker* test into Utah law. While the Court has once cited the test in *dicta*, it has never adopted or applied it. *Matter of Childers-Gray*, 2021 UT 13, ¶64 (citing 369 U.S. 186 (1962)). The “federal doctrine of nonjusticiable political question[s]” has “no relevancy and application in state constitutional analysis.” *State v. Campbell Cnty. Sch. Dist.*, 32 P.3d 325, 334 (Wyo. 2001); accord *Cruz-Guzman v. State*, 916 N.W.2d 1, 8 n.4 (Minn. 2018). The “judicial power of the state of Utah is not constitutionally restricted by the” case or controversy language “of the United States Constitution on which the federal political

The “constitution grants the district courts” the “authority to adjudicate matters that affect a citizen’s” constitutional “rights.” *Matter of Childers-Gray*, 2021 UT 13, ¶65 (citing art. VIII, §§ 1, 5). There is no exception for fossil fuel permits. Indeed, Utah’s courts have a “duty” to “safeguard the [constitutional] rights of the individual whenever such rights are invaded from whatever source,” *Holtgreve*, 200 P. at 900; *Ritchie v. Richards*, 47 P. 670, 675-76 (Utah 1896) (Batch, J., concurring). Even in cases with “significant political overtones,” *Matter of Childers-Gray*, 2021 UT 13, ¶67, Utah’s courts cannot “shirk [their] duty to find an act of the [government] unconstitutional when it clearly appears that it conflicts with some provision of our Constitution.” *Matheson v. Ferry*, 641 P.2d 674, 680 (Utah 1982).

Similarly, Plaintiffs’ claims are well within judicial cognizance under Utah’s separation of powers clause, which determines whether claims present nonjusticiable questions. Utah Const. art. V, § 11; *Ellison v. Barnes*, 63 P. 899, 900 (Utah 1901); *Matter of Childers-Gray*, 2021 UT 13. The clause forbids any member of one branch from exercising “functions appertaining,” *i.e.*, “exclusive” to another. *In re Young*, 1999 UT 6, ¶¶7-8, 14. Stated otherwise, the presence of a political question is a matter of whether adjudicating a claim would be an “interference in matters wholly within the control and discretion of other branches of government[.]” *Matter of Childers-Gray*, 2021 UT 13, ¶62 (quoting *Skokos*, 900 P.2d at 541).

Here, the “function” of determining the constitutionality of the Challenged Permits is not one “appertaining to another branch of government.” Indeed, it is “the duty of the court to interpret, construe, expound, and apply the law” “expressed in [the] constitution” and nothing in Utah’s Constitution addresses fossil fuels, air pollution, or climate change, let alone dedicating matters

question doctrine is based, “since no similar requirement exists in the Utah Constitution.” *Gregory v. Shurtleff*, 2013 UT 18, ¶12, 299 P.3d 1098.

involving these issues exclusively to another branch as to exempt them from judicial review. *Holden*, 46 P. at 760. Plaintiffs’ claims ask this Court to determine Plaintiffs’ rights, adjudge the constitutionality of the Challenged Permits, and order Defendants to use their existing statutory authority to remedy their violation of Plaintiffs’ rights—determinations and relief well within judicial authority.

B. This Case Implicates None of the *Baker* Factors

Even if the *Baker* standard did apply to claims under Utah law, a proper analysis, informed by Utah’s Constitution, further confirms the justiciability of Plaintiffs’ claims. “[T]he Judiciary has a responsibility to decide cases properly before it, even those it would gladly avoid,” and the federal political question doctrine is a “narrow exception to that rule.” *Zivotofsky v. Clinton*, 566 U.S. 189, 194-95 (2012) (cleaned up).

1. Manageable Standards Govern Plaintiffs’ Constitutional Claims

Under the second *Baker* factor,⁴³ “judicially discoverable and manageable standards” are readily available “for resolving” Plaintiffs’ claims. 369 U.S. at 217. Neither of the cases Defendants rely on involved claims remotely analogous to those presented here, a critical distinction because the political question doctrine requires a “discriminating inquiry into the precise facts and posture of the particular case[.]” *Baker*, 369 U.S. at 217. In *Iowa Citizens for Community Improvement v. State*, the court found claims nonjusticiable where the plaintiffs sought to compel the legislature to pass new laws and broadly alleged that the government’s failure to protect water resources violated the public trust doctrine. 962 N.W.2d 780, 787 (Iowa 2021). In

⁴³ The *Baker* factors are “listed in descending order of both importance and certainty.” *Vieth v. Jubelirer*, 541 U.S. 267, 278 (2004). The U.S. Supreme Court has never found a political question absent implication of the first *Baker* factor—an exclusive “textually demonstrable commitment” to another branch of the “particular question posed.” 369 U.S. at 211, 217. Defendants argue only the second and fourth factors. Plaintiffs limit their discussion thusly.

Comer v. Murphy Oil USA, the court found that tort claims brought against private parties for causing “unreasonable” emissions were nonjusticiable. 839 F.Supp.2d 849, 864 (S.D. Miss. 2012), *aff’d on other grounds*, 718 F.3d 460 (5th Cir. 2013).⁴⁴ Plaintiffs here do not challenge government inaction, do not seek to compel new legislation, do not challenge private conduct, and do not bring common law tort claims for damages. Plaintiffs challenge specific, affirmative government conduct—the Challenged Permits—as violating their fundamental substantive due process and inalienable rights, as well as their procedural due process rights, under Utah’s Constitution.

As the Utah Supreme Court made clear in *Cunningham*, the protections of article I, sections 1 and 7 “articulate[] rule[s] sufficient to give effect to the underlying rights and duties intended by the framers[.]” 2011 UT 17, ¶¶59-62. “One need only examine the litany of case law” “interpreting the broad language of such constitutional provisions as the due process” clause and “establishing standards on which to invoke the rights enshrined in those fundamental laws to reject the disingenuousness of the ‘absence-of-standards’ rationale.” *Campbell Cnty. Sch. Dist.*, 32 P.3d at 335-36.

Defendants list a parade of questions they claim the Court must address,⁴⁵ but the inquiry for resolving fundamental rights claims under Utah’s Constitution, its sequence, and how it applies to Plaintiffs’ factual allegations is well-established and straightforward. First, whether the rights to life and liberty, and their enjoyment, encompass protection for Plaintiffs’ health, safety, and longevity is a matter for determination under well-established methods of constitutional

⁴⁴ Defendants neglect to disclose the case history of *Comer*. The Fifth Circuit affirmed the district without reaching the political question doctrine, and on the only occasion where the Fifth Circuit addressed the issue, it reversed the district court, ruling the claims justiciable. *Comer v. Murphy Oil USA*, 585 F.3d 855 (5th Cir. 2009). *See Comer*, 718 F.3d at 464-66 (detailing complex procedural history).

⁴⁵ MTD 26-27.

interpretation. *See* Section III.B; *Utah Sch. Bds. Ass’n v. Utah State Bd. of Educ.*, 2001 UT 2, ¶9, 17 P.3d 1125 (courts have exclusive “power and duty” to “ascertain[] the meaning of a constitutional provision”). Similarly, whether the Challenged Permits impermissibly infringe Plaintiffs’ rights is a matter for determination on the evidence, applying the tiers of scrutiny framework broadly applicable to alleged infringements of life and liberty under Utah’s Constitution. *E.g.*, *Skokos*, 900 P.2d at 542 (whether government “actions pass constitutional muster” under the tiers of scrutiny is “certainly a justiciable issue”).

The profound harms to Plaintiffs’ longevity, health, and safety from the Challenged Permits are squarely within the scope of the fundamental protections for life and liberty afforded by Utah’s Constitution. *See* Section III.B. For example, dangerous air quality caused by Defendants’ permitting “can trigger life-threatening asthma attacks” for Sedona, has caused Dallin to experience respiratory symptoms “so severe that he was immobile for a month,” and is taking years off Plaintiffs lives.⁴⁶ Thus, if the evidence proves Plaintiffs’ allegations of harm, under a strict scrutiny analysis, the burden will shift to Defendants to show the Challenged Permits are “narrowly tailored to further a compelling state interest.” *K.T.B.*, 2020 UT 51, ¶37 & n.67; *League of Women Voters of Utah v. Utah State Legislature*, 2024 UT 21, ¶11, 554 P.3d 872.⁴⁷ Here, Plaintiffs allege they are not narrowly tailored because technologically and economically feasible alternatives to fossil fuels are available to provide energy, support economic development, and raise revenue without causing substantial harm to Plaintiffs’ lives, health, and safety. Compl.

⁴⁶ Compl. ¶¶2, 20, 54, 69.

⁴⁷ *See also Held v. Montana*, No. CDV-2020-307, 2023 WL 5229257, at *45-46 (Mont. 1st Jud. Dist. Ct. Aug. 14, 2023) (applying strict scrutiny to fossil fuel statutes due to harms to youth’s health and safety on full factual record after trial, demonstrating manageability), *aff’d* 560 P.3d 1235 (Mont. 2024).

¶¶194, 206; *see Held*, 2023 WL 5229257, at *36-38 (evidence at trial proved similar allegations against State of Montana).⁴⁸

Similarly, manageable standards are available for resolving Plaintiffs’ claims that Defendants’ issuance of the Challenged Permits without considering resulting emissions, ensuing harms, and alternatives violates their procedural due process rights. Assessing the constitutionality of process requires consideration of three factors—first, the private interest that will be affected by the government action; second, the risk of erroneous deprivation of that interest through the procedures used and the probably value of additional procedures; and third, the State’s interest. *In re Baby Girl T.*, 2012 UT 78, ¶17. Defendants’ offer no meaningful reason why these factors cannot be manageably applied here.⁴⁹

2. Plaintiffs’ Claims Involve No Lack of Respect Due the Other Branches Under the Separation of Powers

Defendants’ contention that resolving Plaintiffs’ claims would necessarily involve a “lack of the respect due coordinate branches of government” under the fourth *Baker* factor, 369 U.S. at

⁴⁸ That Plaintiffs’ claims involve science does not alter justiciability. The availability of manageable standards is not a question of whether the case is “large, complicated, or otherwise difficult to tackle from a logistical standpoint,” but whether “a legal framework exists by which courts can evaluate the[] claims in a reasoned manner.” *Alperin v. Vatican Bank*, 410 F.3d 532, 552, 555 (9th Cir. 2005). Courts have often decided “basic questions of human liberty, the resolution of which demanded an understanding of scientific matters.” Stephen Breyer, *Science in the Courtroom*, 16 *Issues in Sci. & Tech.* no. 4 (2000). As in any case, expert testimony on “scientific, technical, or other specialized knowledge” would aid in resolution of Plaintiffs’ claims. Utah R. Evid. 702. As factfinders, courts are “routinely called upon to evaluate complex scientific evidence[.]” *State v. Jones*, 2015 UT 19, ¶33, 345 P.3d 1195.

⁴⁹ Defendants’ assert resolving Plaintiffs’ procedural due process claim requires second-guessing their “complex policy determinations balancing the nature and level of emissions, harms, and alternative forms of energy.” MTD 27. But procedural due process concerns required procedures, not the substance of policy determinations. Further, it is difficult to imagine what “complex policy determinations” and “balancing” Defendants could be referring to, since they have never given any consideration to “emissions, harms, [or] alternative forms of energy.” Compl. ¶¶82-83; Rosier-Kabwika Decl.

217, similarly upends the separation of powers on which the political question doctrine rests. If declaring executive branch actions unconstitutional and ordering appropriate relief within Defendants’ authority were precluded under the fourth *Baker* factor, courts could never exercise their “duty” to “safeguard the [constitutional] rights of the individual whenever such rights are invaded from whatever source.” *Holtgreve*, 200 P. at 900. “Since the separation of powers exists for the protection of individual liberty, its vitality does not depend on whether the encroached-upon branch approves the encroachment.” *N.L.R.B. v. Canning*, 573 U.S. 513, 571 (2014) (Scalia, J., concurring); *In re Young*, 1999 UT 6, ¶74.

Defendants’ reliance on *Aji P.* to invoke the fourth *Baker* factor is misplaced. There, the plaintiffs’ asked the court to oversee and enforce a comprehensive “climate recovery plan”—relief not requested here. 480 P.3d at 448. Thus, as in *UPHE*, this Court should reject Defendants’ attempt to “‘frame up’ a future political question by asserting that there are no judicially manageable standards to ‘supervise’ the State’s obligations.” No. 230906637, Ruling and Order Re: Motions to Dismiss, at 18 n.40. Plaintiffs ask the Court to declare the existence, contours, and application of their rights to Defendants’ permitting practices, to declare that Defendants’ issuance of the Challenged Permits violates Plaintiffs’ rights, and to order Defendants to use their *existing* statutory authority to review the Challenged Permits and ensure authorized fossil fuel development is narrowly tailored to meet energy needs and avoid harm to Plaintiffs.⁵⁰ Such relief does not require the Court to dictate how Defendants exercise their discretion in determining which permits to approve, deny, suspend, cancel, or modify, or otherwise. *UPHE*, at 18. Determining Plaintiffs’ rights and issuing such declarations is squarely within judicial authority.

⁵⁰ Compl. p. 53-54.

Moreover, resolving Plaintiffs claims would be fully consistent with due respect for the other branches, because Defendants’ conduct in issuing the Challenged Permits defies the 2024 amendments to the State Energy Policy, which “created a new state policy of developing energy resources and planning an energy future ‘with a focus on human well-being and quality of life.’” 2025 UT 5, ¶28.

CONCLUSION

Natalie R. is the clear guidepost. As Defendants concede, Plaintiffs have now alleged the “specific government conduct that was missing in *Natalie R.*,”⁵¹ allowing this court to “make an informed decision that fits the circumstances of the case” and “apply the law to a set of facts to determine whether such actions are constitutional.” 2025 UT 5, ¶52. The motion to dismiss these constitutional claims should be denied.

RESPECTFULLY SUBMITTED this 13th day of February, 2026.

/s/ Andrew L. Welle _____
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⁵¹ MTD 4.

WORD COUNT CERTIFICATION

I, Andrew Welle, certify that this **MEMORANDUM OPPOSING MOTION TO DISMISS** contains 8,999 words, and complies with Utah Rule of Civil Procedure 7(q)(3).