NOTES

"CERTAIN REMEDY AFFORDED FOR EVERY WRONG": STATE CONSTITUTIONAL RIGHT-TO-REMEDY PROVISIONS AS A VEHICLE FOR CLIMATE LITIGATION

Paul Blakeslee[*]

ABSTRACT

The ongoing case in Held v. State of Montana *demonstrates an innovative, though limited, model for activist climate litigation. Because* Held *relies on the Montana Constitution's clean environment guarantee, similar suits could only be replicated in, at most, five other states that have constitutions containing similar guarantees. This Note identifies a different constitutional guarantee, found in forty state constitutions, that can support activist climate litigation that builds on* Held*'s strengths: the constitutional right to judicial remedy. These provisions guarantee that a state's citizen who has suffered a legally cognizable wrong be able to seek a remedy in the state's courts. Using state right-to-remedy provisions as the legal basis for suits that enjoin state regulatory agencies from perpetuating harmful climate policies offers a novel avenue for activist climate litigation that can spur more responsible climate policies at the state level nationwide.*

[*] J.D., Boston University School of Law 2025; M.A. in Art History, American University 2019; B.A. in Art History and B.A. in English, University of the South 2012. Many thanks to Dan Monahan of Pine Tree Legal Assistance for alerting me to the potential of Maine's right-to-remedy provision, Johanna Epke of the Conservation Law Foundation and Kaley Rohlinger for planting the seed of this Note, Professor Pam Hill for all her assistance in developing and refining it, the hardworking editorial staff of the *Boston University Law Review* who got it to print, and especially to my wife, Noelani Kirschner, for reminding me there are still green things worth fighting for.

CONTENTS

ABSTRACT....1829
CONTENTS....1830
INTRODUCTION....1831
I. THE HISTORY OF STATE CONSTITUTIONAL RIGHT-TO-REMEDY PROVISIONS....1833
A. *The English Origins of the Right-to-Remedy Provision*....1833
B. *The Provision's Appearance in State Constitutions*....1835
II. BUILDING ON THE *HELD V. STATE* MODEL....1838
A. *The* Held *Litigation Model*....1838
B. *Using Climate Data in Activist Litigation*....1840
C. THE *HELD* MODEL'S LIMITS....1841
III. USING THE RIGHT-TO-REMEDY PROVISION FOR ACTIVIST CLIMATE LITIGATION....1842
A. *The Elements of a Right-to-Remedy Climate Suit*....1843
1. The Target....1843
2. The Plaintiffs....1843
3. The Legal Claim....1844
4. The Evidence....1845
5. The Remedy....1846
B. *Hypothetical Example of a Right-to-Remedy Climate Suit*....1847
1. The Target....1847
2. The Plaintiffs....1849
3. The Legal Claim....1849
4. The Evidence....1851
5. The Remedy....1852
C. *Coordinating Successful Right-to-Remedy Climate Suits Nationwide*....1852
CONCLUSION....1854
APPENDIX A: TABLE OF STATE CONSTITUTIONAL RIGHT-TO-REMEDY AND ENVIRONMENTAL GUARANTEE PROVISIONS....1855
APPENDIX B: STATE CONSTITUTIONAL ENVIRONMENTAL GUARANTEES....1856
APPENDIX C: STATE CONSTITUTIONAL RIGHT-TO-REMEDY PROVISIONS....1857
A. *First Category*....1857
B. *Second Category*....1860
C. *Third Category*....1861

INTRODUCTION

The accelerating pace of the global climate crisis has prompted an urgent need for creative solutions, including in the American legal system.[1] Though activist climate litigation has often faced significant difficulties in the courts, Our Children's Trust, a nonprofit public interest law firm, recently brought a case in Montana state court, *Held v. State*,[2] that is upending the landscape of activist climate litigation aimed at addressing government inaction on greenhouse gas emissions. On August 14, 2023, the judge in *Held* issued an order enjoining Montana's Department of Environmental Quality from excluding the effects of greenhouse gas emissions from its environmental reviews, based on plaintiffs' state constitutional right to a clean environment.[3]

The *Held* case offers three key insights that provide a model for bringing successful climate suits. First, state constitutions contain rights beyond those found in the U.S. Constitution, offering more avenues for creative legal claims based on climate-related harm. Second, targeting regulatory actions by state agencies can be an effective strategy for mitigating greenhouse gas emissions by judicial order. Third, large-scale climate data has become detailed enough to link regulatory actions by state agencies to localized harm caused by the effects of climate change. This model opens the door for climate litigation in state courts nationwide.

However, only five states besides Montana have similar constitutional environmental guarantees, potentially limiting the *Held* model's utility.[4] Other

[1] Despite having only 4.3% of the world's population, the United States emits 21% of all greenhouse gases; eliminating U.S. greenhouse gas emissions will have a significant effect on the rate of climate change globally. *See* Jeffrey A. Hicke et al., *North America*, *in* INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, CLIMATE CHANGE 2022: IMPACTS, ADAPTATION, AND VULNERABILITY 1929, 1934 (Hans-Otto Pörtner et al. eds., 2022), https://report.ipcc.ch/ar6/wg2/IPCC_AR6_WGII_FullReport.pdf (listing North America's national populations and regional greenhouse gas emissions).

[2] No. CDV-2020-307 (Mont. Dist. Ct. Aug. 14, 2023); *see* Complaint for Declaratory and Injunctive Relief at 1, *Held*, slip op. (No. CDV-2020-307). The Montana Supreme Court has granted appeal, and the case is currently pending decision. *See* Held v. State, No. DA 23-0575, 2023 Mont. LEXIS 1034, at *1-2 (Oct. 17, 2023) (granting Montana's appeal). In this Note, "*Held*" refers to the district court case.

[3] *Held*, slip op. at 101-02.

[4] Those states are Hawaii, Illinois, Massachusetts, New York, and Pennsylvania. For the full text of each state's constitutional provision, see *infra* Appendix B. Our Children's Trust, the organization that spearheaded the *Held* suit, currently reports pending litigation in Alaska, Hawaii, Montana, Utah, and Virginia. *Active State Legal Actions*, OUR CHILD.'S TR., https://www.ourchildrenstrust.org/pending-state-actions [https://perma.cc/3YLT-TQ7W] (last visited Oct. 9, 2024). Of those, only Hawaii and Montana have clean environment guarantees. For a discussion of the pending case in Hawaii, see *infra* note 56. The suits in Utah and Virginia are based primarily on substantive due process claims. *See infra* note 40. Additionally, in Florida, the organization assisted youth in the state with filing a petition for

state constitutional guarantees must be explored as avenues for climate litigation in order to fully realize the *Held* model's potential application.

This Note proposes applying the *Held* model to a right that already exists in some form in forty state constitutions: the constitutional right to remedy.[5] These right-to-remedy provisions essentially codify the English common-law route to equitable remedy: a citizen who has suffered a legally cognizable injury must be allowed to seek a remedy in court.[6] While there is no unifying theory among state courts about the limits and applications of the provision, there are some discernible categories of use that can inform how to apply the provision in the climate litigation context.[7]

Section I.A explores the origins of the right-to-remedy provision in English common law, while Section I.B discusses its importation into state constitutions and the case law that has evolved around its use. Part II breaks down the *Held* model in greater detail, focusing on its development through Our Children's Trust's litigation (Section II.A), its use of climate data (Section II.B), and its limitations (Section II.C). Section III.A outlines the essential elements of a

rulemaking asking the state's Department of Agriculture and Consumer Services to establish a goal of fully renewable energy in the state by 2050. *See* Abbie Bennett, *Florida Sets Goal of 100% Renewable Energy by 2050*, S&P GLOB. (Apr. 22, 2022), https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/florida-sets-goal-of-100-renewable-energy-by-2050-69945332 [https://perma.cc/49Z7-B957] (noting Florida's renewable energy goals and policies were created in cooperation with Our Children's Trust). The organization claims to be developing new litigation in Florida, although nothing has yet been filed. *See Florida*, OUR CHILD.'S TR., https://www.ourchildrenstrust.org/florida [https://perma.cc/HR2S-RMZX] (last visited Oct. 9, 2024).

[5] For the full text of the relevant provisions for all forty states, categorized by similarities in wording, see *infra* Appendix C. The states without this provision are Alaska, California, Hawaii, Iowa, Michigan, Nevada, New Jersey, New Mexico, New York, and Virginia. Appendix A contains a table identifying whether each state has a constitutional environmental guarantee, a constitutional right-to-remedy provision, both, or neither. For instance, Illinois, Massachusetts, Maryland, and Pennsylvania have both types of provisions in their constitutions, while only New York and Hawaii have the combination of an environmental guarantee but no right-to-remedy provision.

[6] These provisions are known by several names, including open court provisions—a name suggesting courts must be open to citizens seeking a remedy. *See* Matthew G. Gunn & Erica S. Phillips, *Idaho's Open Courts Provision: What, if Anything, Does It Guarantee?*, IDAHO ST. BAR, https://isb.idaho.gov/blog/idahos-open-courts-provision-what-if-anything-does-it-guarantee/ [https://perma.cc/7MHC-V84K] (last updated June 10, 2022) ("By its plain language, Article I, § 18 guarantees to 'every person' in Idaho a 'speedy remedy . . . for every injury of person, property or character . . . .'"). However, the term "open courts provisions" has also been used to speak to the required availability of public court records for a state's citizens. *See id.* (noting lack of guidance from Supreme Court has led to different meanings and interpretations of open courts provisions at state level). For the sake of clarity, this Note exclusively refers to the forty state constitution provisions at issue as "right-to-remedy" provisions.

[7] For a discussion of these categories, see *infra* text accompanying note 27.

right-to-remedy climate suit under the *Held* model, Section III.B applies those elements to a hypothetical example of a right-to-remedy climate suit, and Section III.C highlights strategic considerations for bringing such suits nationwide. Finally, Appendix A identifies which states' constitutions contain clean environment guarantees and right-to-remedy provisions, and Appendices B and C list the full text of each relevant provision.

I. THE HISTORY OF STATE CONSTITUTIONAL RIGHT-TO-REMEDY PROVISIONS

While the right to judicial remedy has no analog in the U.S. Constitution, it is widely represented on the state level; some version of the provision appears in forty state constitutions.[8]

A. *The English Origins of the Right-to-Remedy Provision*

The common language forming the backbone of state constitutional right-to-remedy provisions derives from Sir Edward Coke's interpretation of the Magna Carta, which reads:

> [E]very Subject of this Realme, for injury done to him *in bonis, terris, vel persona* [goods, lands, or person], by any other Subject, be he Ecclesiasticall, or Temporall, Free, or Bond, Man, or Woman, Old, or Young, or be he outlawed, excommunicated, or any other without exception, may take his remedy by the course of the Law, and have justice, and right for the injury done to him, freely without sale, fully without any deniall, and speedily without delay.[9]

The quoted passage appears in Coke's explanation of Magna Carta Chapter 29.[10] The relevant language from the Magna Carta states, "*Nulli vendemus, nulli negabimus aut differemus rectum aut justiciam*,"[11] or, "To no one will we sell, to no one will we deny or delay right or justice."[12]

Whereas the original provision was distinctly a product of its historical context, intended primarily to prevent the lucrative selling of writs by King

[8] *See infra* Appendix C.

[9] EDWARD COKE, THE SECOND PART OF THE INSTITUTES OF THE LAWES OF ENGLAND 55-56 (London, M. Flesher & R. Young 1st ed. 1642).

[10] The provision appeared as Chapter 40 in the original version of the Magna Carta but was renumbered in a subsequent reissue of the document Coke was working with. Jonathan M. Hoffman, *Questions Before Answers: The Ongoing Search to Understand the Origins of the Open Courts Clause*, 32 RUTGERS L.J. 1005, 1006 n.4 (2001). Scholars refer to both Chapter 29 and Chapter 40 when discussing the same language underlying right-to-remedy provisions.

[11] MAGNA CARTA ch. 40 (1215), *reprinted and translated in* J.C. HOLT, MAGNA CARTA 5 (3d ed. 2015)

[12] *Id.* at 425.

John's courts in thirteenth-century England,[13] in Coke's hands the language instead transformed into a basic right of access to justice—"an affirmation of fundamental law and the liberty of the subject."[14] Blackstone's *Commentaries* adopted Coke's formulation of the right to judicial remedy, stating both that "it is a general and indisputable rule, that where there is a legal right, there is also a legal remedy . . . whenever that right is invaded,"[15] and that "it is a settled and invariable principle in the laws of England, that every right when withheld must have a remedy, and every injury its proper redress."[16] For Blackstone, the right to remedy formed part of a constellation of five subordinate rights which enabled the vindication of the three primary fundamental rights "of personal security, of personal liberty, and of private property."[17]

Blackstone's formulation of the right of judicial access underpinning fundamental rights has figured heavily in American common law. On the federal level, Justice Marshall cited Blackstone in *Marbury v. Madison*[18] as support for his contention that the "very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury."[19] Indeed, Marshall's explication of judicial review in the American

[13] *See* David Schuman, *The Right to a Remedy*, 65 TEMP. L. REV. 1197, 1199 (1992) (explaining King John's courts had "fallen into disrepute for their practice of selling writs"); Jonathan M. Hoffman, *By the Course of the Law: The Origins of the Open Courts Clause of State Constitutions*, 74 OR. L. REV. 1279, 1286 (1995) ("There is little dispute that Chapter 40 of Magna Carta was intended to restore the integrity of the courts by curtailing the selling of writs." (footnote omitted)).

[14] HOLT, *supra* note 12, at 36. This right, as Coke identified it, is both absolute and affirmative: any person, "without exception," has the right to bring their injury to the courts and full access to the justice process the court can offer without sale, denial, or delay. COKE, *supra* note 9, at 55-56.

[15] 3 WILLIAM BLACKSTONE, COMMENTARIES *23.

[16] *Id.* at *109.

[17] 1 WILLIAM BLACKSTONE, COMMENTARIES *140. The four other subordinate rights include the constitution and the powers of Parliament; limitations to the royal prerogative; the right to petition the monarch and Parliament for redress of grievances; and the right to bear firearms in defense and self-preservation. *Id.* Notably, however, Coke's and Blackstone's right to remedy protected citizens against the abuse of their fundamental rights only by the monarch or private parties; legislative acts by Parliament that infringed on those rights could not be addressed by the judicial system. *See* Thomas R. Phillips, *The Constitutional Right to a Remedy*, 78 N.Y.U. L. REV. 1309, 1323 (2003) ("Blackstone clearly saw the remedies guarantee only as a check on royal and other 'private' abuses of power, not parliamentary excess.").

[18] 5 U.S. (1 Cranch) 137 (1803).

[19] *Id.* at 163 (citing BLACKSTONE, *supra* note 16, at *23, *109).

system looked to English common law principles by necessity, because the U.S. Constitution contains no explicit right to judicial remedy.[20]

American state and federal common law have also relied on the maxim "*ubi jus ibi remedium*" (where there is a right, there is also a remedy) to indicate the same principle—namely, the protection of a right to judicial remedy.[21] However, American courts' historical analyses appear to have blurred the distinction between the maxim and Coke's remedy clause, using them more or less interchangeably.[22] This blurring illustrates that, despite being rooted in foundational principles of English common law, the American right-to-remedy provision as it exists today cannot be understood solely by studying its English origins. Instead, its meaning has evolved through a series of largely ad hoc and idiosyncratic treatments in the case law of the states that have adopted it in their constitutions.

B. *The Provision's Appearance in State Constitutions*

The right-to-remedy provision has always been present in American state constitutional law. Six state constitutions ratified prior to the adoption of the U.S. Constitution in 1789 contained a version of the right-to-remedy provision.[23] Delaware's constitution, the first state constitution adopted, included the

[20] The North Carolina ratifying convention for the U.S. Constitution proposed an amendment to the Bill of Rights, ultimately rejected, that followed Coke's language and resembled the provision found in state constitutions:

> That every freeman ought to find a certain remedy, by recourse to the laws, for all injuries and wrongs he may receive in his person, property, or character; he ought to obtain right and justice freely without sale, completely and without denial, promptly and without delay; and that all establishments or regulations contravening these rights are oppressive and unjust.

BERNARD SCHWARTZ, 2 THE BILL OF RIGHTS: A DOCUMENTARY HISTORY 967-68 (1971).

[21] *See, e.g.*, Bond & Willis v. Hilton, 47 N.C. (2 Jones) 149, 150-51 (1855) (finding under maxim, breach of contract or violation of right presumes damages regardless of if cognizable loss is shown). Jonathan M. Hoffman has argued that this maxim finds its source not in Magna Carta Chapter 29, but rather in either the Statute of Marlebridge or the Statute of Westminster. *See* Hoffman, *supra* note 10, at 1013-14. Because that maxim was used in English common law as a rule of statutory interpretation, Hoffman contends that Coke's right-to-remedy language must "mean something more" and that Coke "articulated a constitutional basis to protect the courts from improper outside interference." *Id.* at 1016.

[22] *See, e.g.*, *Marbury*, 5 U.S. (1 Cranch) at 163 ("[W]here there is a legal right, there is also a legal remedy by suit or action at law whenever that right is invaded." (quoting BLACKSTONE, *supra* note 16, at *23)).

[23] Those states are Delaware, Maryland, Massachusetts, New Hampshire, North Carolina, and Pennsylvania. Kentucky, Tennessee, and Vermont, the three states to join the Union between 1789 and 1800, all included similar provisions, modeled after Delaware's. Phillips, *supra* note 17, at 1323-24.

provision and appeared to be the general model for all other states' provisions.[24] While it is possible to trace the lineage of the right-to-remedy provision from English common law into state constitutions, the reason for the provision's inclusion is often more mysterious. Many states adopted the provision with little or no debate that could offer courts a record from which to discern legislative intent when interpreting the provision.[25]

Moreover, the use of the provision in state courts defies easy categorization. As David Schuman notes regarding Oregon's provision, "it arises in a perplexing variety of legal actions; in only a few instances is a remedy argument from one context carried over into a different one."[26] Nevertheless, he identifies three basic categories of the provision's use in Oregon that apply to other states' use of the provision: (1) suits which attack traditional or statutory immunities, including statutes of limitations, worker's compensation programs, and state tort immunity; (2) suits which, in combination with the Fourteenth Amendment's substantive due process clause, "attack state action that allegedly injures plaintiffs by impermissibly depriving them of property"; and (3) suits which challenge the procedure providing a guaranteed remedy, roughly analogous to a procedural due process claim.[27]

These categories, of course, contain multitudes, with no unifying theory of how the provision should be applied. Some courts have tried to achieve

[24] Hoffman, *supra* note 10, at 1030. Although Ned Miltenberg has argued for the Massachusetts constitution of 1780, under the authorship of John Adams, as the original source for the state right-to-remedy provision, Delaware's constitution was ratified four years prior in 1776, making Miltenberg's contention unconvincing. *See* Ned Miltenberg, *The Revolutionary "Right to a Remedy*,*"* TRIAL, Mar. 1998, at 48, 51-52 (1998). Hoffman instead posits the lawyer Thomas McKean as the most likely author of the provision in the Delaware constitution. *See* Hoffman, *supra* note 10, at 1030-31. Delaware began "as part of the Pennsylvania proprietorship" before splitting off on its own, and language by William Penn in both the proprietorship's 1682 Laws Agreed Upon in England and the colony's 1701 charter resemble aspects of the eventual right-to-remedy provision. *Id.* at 1030. Thus, it appears that the provision's inclusion in state constitutions beginning with Delaware's might ultimately derive from the importance Penn—a victim of religious persecution in England—placed on enforcing traditional English rights in the colony under his control. *See id.* ("Although Delaware later split from Pennsylvania, Penn's charter and Laws Agreed Upon remained part of fundamental law and heritage.").

[25] *See* Phillips, *supra* note 17, at 1315 n.28 (listing fourteen states with legislative records showing no debate on adoption of right-to-remedy provisions, despite those provisions appearing in the states' constitutions). *But see* Crier v. Whitecloud, 496 So. 2d 305, 309-10 (La. 1986) (finding framers of Louisiana Constitution "did not intend to limit the legislature's ability to restrict causes of action or to bar the legislature from creating various areas of statutory immunity from suit" because state's 1974 Constitutional Convention chose not to adopt addition to right to remedy provision).

[26] David Schuman, *Oregon's Remedy Guarantee: Article I, Section 10 of the Oregon Constitution*, 65 OR. L. REV. 35, 42 (1986).

[27] *Id.* at 42-43.

consistent application, with little success. For instance, the Missouri Supreme Court has found that the state's right-to-remedy provision does not prohibit statutes that limit or eliminate common law causes of action but does prohibit statutes that impose procedural bars to judicial access.[28] Nevertheless, that court has taken two diametrically opposing views on a single statute that tolls the statute of limitations on claims by minors and mentally disabled people—with the exception of medical malpractice claims.[29] The court has found the right-to-remedy provision defeats the statutory exception for minors with medical malpractice claims,[30] but not for mentally disabled people with similar claims.[31] Even if there are legitimate reasons to deal with those two classes of claimants differently, those reasons are not obviously found in the right-to-remedy provision.

Perhaps because of such inconsistent application, some courts appear to be trending toward reducing the scope of the right. In 2003, the South Dakota Supreme Court narrowed its interpretation of the state's right-to-remedy provision,[32] overturning as too expansive an earlier ruling that had struck down the personal injury statute of limitations for violating the directive that "the courts of this state shall be open to the injured and oppressed."[33] In Oregon, "courts have invoked the amorphous but comfortable authority of 'public policy' whenever a difficult case presented itself," such that the right-to-remedy provision "has in every area given way before every immunity it was used to challenge."[34] With these limitations in mind, a right-to-remedy climate suit must be carefully constructed to fit within the particular state's jurisprudence on its provision. Litigators must bear in mind the state's judicial climate toward the provision, as there is a genuine possibility that an unfavorable result in a right-to-remedy climate suit could make bad case law around the provision, limiting future avenues for litigation. How, then, can activist climate litigators use the right-to-remedy provision to their advantage?

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[28] *See* Adams *ex rel.* Adams v. Child.'s Mercy Hosp., 832 S.W.2d 898, 905-06 (Mo. 1992) (upholding Missouri statute because it did not "erect a condition precedent or any other procedural barrier to access to the courts . . . . [I]t simply redefines the substantive law"), *overruled on other grounds by* Watts v. Lester E. Cox Med. Ctrs., 376 S.W.3d 633, 636 (Mo. 2012); MO. CONST. art. I, § 14.

[29] MO. REV. STAT. § 516.170 (West 2024).

[30] Strahler v. St. Luke's Hosp., 706 S.W.2d 7, 11-12 (Mo. 1986) (finding statute of limitations unreasonable as applied to minors because it violated their right of access to courts).

[31] Wheeler v. Briggs, 941 S.W.2d 512, 515 (Mo. 1997) (upholding statute of limitations because mentally disabled people "are not legally prohibited from filing suit").

[32] S.D. CONST. art. VI, § 20.

[33] Cleveland v. BDL Enters., Inc., 2003 SD 54, ¶ 35, 663 N.W.2d 212, 221 (quoting Daugaard v. Baltic Coop. Bldg. Supply Ass'n, 349 N.W.2d 419, 425 (S.D. 1984)).

[34] Schuman, *supra* note 26, at 57.

II. BUILDING ON THE *HELD V. STATE* MODEL

In general, climate litigation must contend with four major obstacles. First, the United States has no singular law addressing climate change, forcing litigants to rely on a patchwork of environmental laws not suited to the scale of the current crisis.[35] Second, plaintiffs often have trouble establishing sufficient standing to bring climate-related suits.[36] Third, federal environmental laws generally preempt tort suits brought against individual polluters.[37] Finally, courts often hesitate to intervene in the "complex policy decisions entrusted, for better or worse, to the wisdom and discretion of the executive and legislative branches."[38] The ongoing case of *Held*, brought by nonprofit litigators at Our Children's Trust on behalf of youth plaintiffs in Montana, effectively contends with all four of these obstacles. Thus, *Held* offers a litigation model that increases the chance of favorable outcomes for other activist climate suits.

A. *The* Held *Litigation Model*

Our Children's Trust, a nonprofit public interest law firm under the direction of attorney Julia Olson, has pioneered the type of climate suit brought in *Held*.[39] The organization has brought and continues to bring climate cases on behalf of

[35] *See* MORGAN HIGMAN, SARAH LADISLAW & NIKOS TSAFOS, CTR. FOR STRATEGIC & INT'L STUD., CLEAN RESILIENT STATES: THE ROLE OF U.S. STATES IN ADDRESSING CLIMATE ACTION 1 (2021), https://csis-website-prod.s3.amazonaws.com/s3fs-public/publication/210209_Higman_Clean_Resilient.pdf [https://perma.cc/H9J2-CTC2] (highlighting how inconsistencies in federal energy and climate policy have increased reliance and importance of state laws and frameworks to address climate change).

[36] *See* Lujan v. Defs. of Wildlife, 504 U.S. 555, 560-61 (1992) (noting precedent establishes irreducible constitutional minimum of standing as (1) injury-in-fact, (2) causation, and (3) redressability, citing numerous climate-related cases); *see also* Sierra Club v. Morton, 405 U.S. 727, 740 (1972) (rejecting Sierra Club's efforts on behalf of its members to enjoin construction of ski resort on environmental preservation grounds). Justice Douglas famously dissented from this decision, arguing instead that "[c]ontemporary public concern for protecting nature's ecological equilibrium should lead to the conferral of standing upon environmental objects to sue for their own preservation." *Sierra Club*, 405 U.S. at 741-42 (Douglas, J., dissenting). Had a majority of the Court adopted his position, the standing issue in activist climate change litigation would be less complicated.

[37] *See, e.g.*, Am. Elec. Power Co. v. Connecticut, 564 U.S. 410, 424 (2011) (holding Clean Air Act preempted federal nuisance claims brought against polluting power plants).

[38] Juliana v. United States, 947 F.3d 1159, 1171 (9th Cir. 2020) (declaring federal government's handling of climate crisis beyond scope of redressability in Article III courts, notwithstanding plaintiffs' demonstrated injury); *see also* Massachusetts v. EPA, 549 U.S. 497, 535 (2007) (Roberts, C.J., dissenting) ("This Court's standing jurisprudence simply recognizes that redress of grievances of the sort at issue here 'is the function of Congress and the Chief Executive,' not the federal courts." (quoting *Lujan*, 504 U.S. at 576)).

[39] *See* John Schwartz, *Building a Movement with a Climate Suit vs. the Government*, N.Y. TIMES, Oct. 24, 2018, at A17.

youth plaintiffs in multiple states, including Hawaii, Utah, and Virginia.[40] Our Children's Trust also brought a similar case, *Juliana v. United States*,[41] in federal court in Oregon. *Juliana*, which was ultimately unsuccessful, provides an instructive counterpoint to the *Held* model. The *Juliana* plaintiffs advanced a substantive due process claim contending the federal government's policy toward the climate crisis and greenhouse gas emissions injured their rights.[42] The court found that, although the plaintiffs had sufficiently demonstrated injury, they lacked standing for redressability because "it is beyond the power of an Article III court to order, design, supervise, or implement the plaintiffs' requested remedial plan" enjoining the federal government from permitting, authorizing, or subsidizing fossil fuel use.[43] In essence, the court found their proposed remedy too broad because it would require significant judicial intervention in and oversight over federal executive authority.

The *Held* plaintiffs tailored their suit in two important ways that distinguish the case from *Juliana*. First, by bringing their suit in Montana state court, the *Held* plaintiffs were able to look beyond the U.S. Constitution's enumerated powers to instead seek relief using a wider array of state constitutional guarantees—here, a constitutional guarantee to a clean environment with no federal analog.[44] Although a state-level suit affords a narrower and more limited range of relief for a problem of international scope, a focused case brought on state constitutional guarantees demonstrates an approach that, over time, can meaningfully build broad-based state-level climate policy improvements across the United States. This narrower approach also necessarily limits the scope of judicial intervention—statewide rather than nationwide.

Second, the *Held* plaintiffs requested narrower, more concrete relief. Instead of asking the court to compel entirely new processes and whole-of-government policies, the *Held* plaintiffs sought an injunction requiring the Montana Department of Environmental Quality to consider greenhouse gas emissions when executing its already-existing environmental review process.[45]

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[40] *See* Complaint for Declaratory and Injunctive Relief at 1, Navahine F. v. Dep't of Transp., No. 1CCV-22-0000631 (Haw. Cir. Ct. filed June 1, 2022); Motion to Dismiss at 2, Natalie R. *ex rel.* Roussel v. State, No. 220901658, 2022 WL 20814755 (Utah Dist. Ct. May 6, 2022), *cert. granted* Roussel v. State, No. 20230022 (Utah Mar. 10, 2023); Complaint for Declaratory and Injunctive Relief at 72, Layla H. *ex rel.* Hussainzadah v. Commonwealth, No. 1639-22-2 (Va. Cir. Ct. filed Feb. 9, 2022).

[41] *Juliana*, 947 F.3d at 1163.

[42] *Id.* at 1165.

[43] *Id.* at 1171.

[44] Held v. State, No. CDV-2020-307, slip op. at 94-100 (Mont. Dist. Ct. Aug. 14, 2023) (arguing statute forbidding State or its agents from considering impacts of greenhouse gas emissions or climate change in their environmental reviews violated plaintiffs' right to clean and healthful environment under Montana Constitution).

[45] *Id.* at 101-02.

This remedy provides a discrete and limited avenue for judicial action while nevertheless meaningfully addressing the plaintiffs' core claim of injury.[46] Activist climate litigators should build on these key aspects of the *Held* model, bringing state-level cases that challenge discrete regulatory actions by state agencies that exacerbate greenhouse gas emissions and contribute to the acceleration of the climate crisis.

B. *Using Climate Data in Activist Litigation*

The *Held* model also demonstrates how to effectively link large-scale climate change data to plaintiffs' particularized claim of harm due to greenhouse gas emissions. Much of the *Held* court's decision is devoted to findings of fact that trace the connection the plaintiffs drew between greenhouse gas emissions, the accelerating pace of climate change, and the specific injuries plaintiffs alleged have resulted from Montana's changing climate.[47] The court ruled that "Montana's [greenhouse gas] emissions have been proven to be fairly traceable to" the statute barring the state government from considering the impacts of greenhouse gas emissions or climate change when conducting environmental reviews.[48]

Climate scientists have concluded that "it is now possible to quantify the influence of anthropogenic climate change on certain types of specific extreme [weather] events."[49] Groups of researchers such as the World Weather Attribution ("WWA") group now routinely publish studies documenting the extent to which individual extreme weather events are exacerbated by the effects of climate change.[50] Further, interactive mapping tools available to the public can identify climate vulnerability across numerous metrics at the census tract level across the United States.[51] These attribution and vulnerability assessments

[46] *Id.* at 102 ("This judgment will influence the State's conduct by invalidating statutes prohibiting analysis and remedies based on [greenhouse gas] emissions and climate impacts, alleviating Youth Plaintiffs' injuries and preventing further injury.").

[47] *See id.* at 17-70.

[48] *Id.* at 101.

[49] Adam Terando et al., *Chapter 3. Earth Systems Processes*, *in* U.S. GLOB. CHANGE RSCH. PROGRAM, FIFTH NATIONAL CLIMATE ASSESSMENT (Allison R. Crimmins et al. eds., 2023), https://nca2023.globalchange.gov/downloads/NCA5_2023_FullReport.pdf.

[50] *See* Lois Parshley, *Blame Game*, SCI. AM., June 2023, at 44, 46-47. For a recent example of a published attribution study by WWA scientists, see Mariam Zachariah, Savitri Kumari, Arpita Mondal, Karsten Haustein & Friederike E. L. Otto, *Attribution of the 2015 Drought in Marathwada, India from a Multivariate Perspective*, WEATHER & CLIMATE EXTREMES 1 (Jan. 2, 2023), https://www.sciencedirect.com/science/article/pii/S2212094722001256/pdfft?md5=35f34bdcad47f3664832e62c45bf5e93&pid=1-s2.0-S2212094722001256-main.pdf [https://perma.cc/7WY7-BEFW].

[51] *See EJScreen: EPA's Environmental Justice Screening and Mapping Tool*, EPA, https://ejscreen.epa.gov/mapper/ (last visited Oct. 9, 2024) (showing vulnerabilities based on

depend on comparing multiple virtual climatological models using cloud computing, harnessing the power of big data in a manner that is increasingly available to individual researchers.[52] Careful collection and presentation of such attribution data can present a compelling case for proving proximate causation in activist climate litigation.

The *Held* court grappled seriously with the climate change data plaintiffs presented in the record, demonstrating the role judges can play in an area where environmental laws are struggling to keep up with the breakneck speed at which the climate crisis is accelerating.[53] The court's findings of fact extensively discuss the impacts of CO_2 emissions on the rising "global, national, and Montana air temperatures."[54] Litigators using the *Held* model can increase the likelihood of favorable results by similarly using detailed climate data to draw the links between greenhouse gas emissions and particularized harm to plaintiffs.[55]

C. *The* Held *Model's Limits*

Despite the *Held* model's considerable innovations, the scarcity of state constitutional clean environment guarantees requires extending the model under other legal claims.[56] Even among the six states with constitutional environmental

variables including wildfire risk and sea level rise); Env't Def. Fund, Tex. A&M Univ. & Darkhorse Analytics, *Overall Climate Vulnerability*, U.S. CLIMATE VULNERABILITY INDEX, https://map.climatevulnerabilityindex.org/map/cvi_overall/usa [https://perma.cc/4BC2-YR7G] (last visited Oct. 9, 2024) (showing one tract in South Nashville, Tennessee ranks within ninety-ninth percentile of climate vulnerability nationwide, while nearby tract in East Nashville ranks only in thirty-second); *see also Climate and Economic Justice Screening Tool*, COUNCIL ON ENV'T QUALITY, https://screeningtool.geoplatform.gov/en/ (last visited Oct. 9, 2024) (presenting metrics for census tracts including expected agriculture loss rate, projected flood risk, and projected wildfire risk).

[52] *See* Parshley, *supra* note 50, at 47 (noting cloud services as particularly useful).

[53] *See Held*, slip op. at 101 (finding Montana's greenhouse gas emissions have been traced back to limiting provision of Montana Environmental Policy Act).

[54] *Id.* at 21.

[55] For a more detailed discussion, see *infra* Section III.A.4.

[56] Our Children's Trust recognizes this limitation, given its efforts to find other underlying legal claims for suits in states without these guarantees. *See supra* note 40 and accompanying text. However, it is also litigating a case based on Hawaii's constitutional guarantee to a clean environment. *See* Complaint for Declaratory and Injunctive Relief, *supra* note 40, at 1. The injunctive relief sought in Hawaii is broader than in *Held*, seeking to enjoin the state's Department of Transportation to "cease establishing, maintaining, and operating the state transportation system in a manner that breaches [its] mandatory duty under the constitutional public trust doctrine, fails to align with the Zero Emissions Target and other climate mitigation mandates, and infringes upon Youth Plaintiffs' constitutional right to a clean and healthful environment," subject to judicial oversight under a special master. *Id.* at 70. On June 20, 2024, the State of Hawaii settled with the youth plaintiffs, affirming their constitutional right to a

guarantees, the *Held* strategy does not appear to be universally applicable, given the wide range of language making up these provisions. Whereas the Montana constitution provides "the right to a clean and healthful environment and the rights of pursuing life's basic necessities,"[57] Illinois, for instance, guarantees only a "healthful" environment.[58] Based on this language, Illinois courts have found the provision protects only those environmental factors that directly impact human health.[59] Illinois courts have additionally found that the environmental guarantee "does not create any new causes of action," precluding plaintiffs' ability to sue for its enforcement.[60] Similarly, Massachusetts does not allow suits against the state to enforce the provision.[61] Hawaii's legislature may limit plaintiffs' right to sue to enforce the environmental guarantee.[62]

These differences further reduce the possibility of bringing successful climate suits in at least some of the six states with clean environment guarantees. Nevertheless, the basic innovations of the *Held* model can be extended past this limitation by finding other state constitutional guarantees without federal analogs that can be used to bring climate suits against state government agencies whose regulatory actions promote climate harm.

III. USING THE RIGHT-TO-REMEDY PROVISION FOR ACTIVIST CLIMATE LITIGATION

How, then, can state right-to-remedy provisions be used to bring climate suits following the *Held* model? This Part outlines the necessary elements of such a suit in Section III.A, and then, in Section III.B, applies those elements to a hypothetical suit to illustrate the specifics required for each. Finally,

clean environment. *See Navahine v. Hawaii DOT*, OUR CHILD.'S TR., https://navahinevhawaiidot.ourchildrenstrust.org [https://perma.cc/J3J9-AYZT] (last visited Oct. 9, 2024).

[57] MONT. CONST. art. II, § 3. *See infra* Appendix B for the provision's full text.

[58] ILL. CONST. art. XI, § 2 ("Each person has the right to a healthful environment."). For the provision's full text, see *infra* Appendix B.

[59] *See* Glisson v. City of Marion, 720 N.E.2d 1034, 1044 (Ill. 1999) ("The protection of endangered and threatened species does not fall within the intended scope of a person's right to a 'healthful environment.'").

[60] City of Elgin v. Cnty. of Cook, 660 N.E.2d 875, 891 (Ill. 1995).

[61] *See* Hootstein v. Amherst-Pelham Reg'l Sch. Comm., 361 F. Supp. 3d 94, 113-14 (D. Mass. 2019) (rejecting private cause of action under Article XCVII of Massachusetts Constitution Articles of Amendments, which guarantees right to clean air environment in state).

[62] John C. Dernbach, *The Environmental Rights Provisions of U.S. State Constitutions: A Comparative Analysis*, *in* ENVIRONMENTAL LAW BEFORE THE COURTS: A US-EU NARRATIVE 35, 43 (Giovanni Antonelli et al. eds., 2023). However, Our Children's Trust has demonstrated that, at least so far, the legislature does not seem inclined to limit that right. *See generally* Complaint for Declaratory and Injunctive Relief, *supra* note 40.

Section III.C highlights possible opportunities for coordinating such suits across different states nationwide.

A. *The Elements of a Right-to-Remedy Climate Suit*

Any right-to-remedy climate suit must necessarily comprise several elements. These elements are: (1) the suit's target; (2) plaintiffs with sufficient standing to bring the suit; (3) a legal claim on which to base the suit; (4) evidentiary support for the plaintiff's claim; and (5) a requested remedy that will stand on redressability grounds. The *Held* model offers strategic insights for each of these elements.

1. The Target

As the *Held* model demonstrates, state government agencies are effective targets for climate suits. Targeting agencies through the state courts can enable plaintiffs to force judicial review of the agencies' regulatory actions that ignore or exacerbate the effects of climate change.[63] Carefully tailoring the suit's target in this way can set the suit up for a favorable outcome; however, too broad a target can intimidate a court worried about redressability issues.[64]

2. The Plaintiffs

The plaintiffs in such a climate suit need to be residents of the state in which the suit is brought. Their standing would be assessed using the Supreme Court's test developed in *Lujan v. Defenders of Wildlife*.[65] To prove sufficient standing, plaintiffs must be able to show: (1) a concrete and particularized injury in fact that is actual or imminent; (2) a causal connection between the plaintiff's injury and the defendant's alleged conduct; and (3) a likelihood that a favorable outcome will redress the plaintiff's injury.[66] Thus, potential plaintiffs need to demonstrate harm to either their health or property—or future harm to either their health or property with a high degree of certainty—attributable to extreme

[63] *See* Held v. State, No. CDV-2020-307, slip op. at 1 (Mont. Dist. Ct. Aug. 14, 2023) (targeting "the State of Montana, the Governor, Montana Department of Environmental Quality, Montana Department of Natural Resources and Conservation, Montana Department of Transportation, and Montana Public Service Commission . . . .").

[64] As discussed above, the *Juliana* court balked at the scope of the requested redress related to federal climate policy writ large. *See supra* note 38 and accompanying text.

[65] 504 U.S. 555, 560-61 (1992) (showing action brought by environmental groups against Secretary of the Interior for insufficient consultation regarding endangered species).

[66] *Id.* Justice Kennedy, writing in concurrence, specified that the concrete and particularized injury requirement does not necessarily preclude standing for injuries that happen to large numbers of people. *See id.* at 581 (Kennedy, J., concurring in part) ("While it does not matter how many persons have been injured by the challenged action, the party bringing suit must show that the action injures him in a concrete and personal way.").

weather events caused or exacerbated by climate change.[67] The climate vulnerability mapping tools discussed in Section II.B could help prove plaintiffs' property-based standing claims.[68] For instance, floodplain and fire risk maps reflecting the increased prevalence of extreme weather due to climate change could identify areas where plaintiff homeowners or tenants are increasingly likely to lose property or access to housing due to the increased prevalence of extreme weather as the climate crisis accelerates.[69]

3. The Legal Claim

Right-to-remedy provisions offer three basic types of legal claims upon which to bring activist climate suits. The first two correspond to two of David Schuman's three general categories of right-to-remedy suits.[70]

The first type of suit sounds in tort, using the state's right-to-remedy provision to overcome the barrier of state tort immunity.[71] Defeating traditional common law immunities for vested common law rights represents a paradigmatic use of the right-to-remedy provision.[72] This type of tort suit would be well-suited for plaintiffs who have suffered bodily harm or the loss of property, traditional injuries well-recognized within the law.[73] However, not all states' right-to-remedy provisions defeat sovereign immunity, limiting the applicability of this

[67] *See* Bradford C. Mank, *Standing and Future Generations: Does* Massachusetts v. EPA *Open Standing for Generations to Come?*, 34 COLUM. J. ENV'T L. 1, 24 (2009) ("A non-government plaintiff may sometimes have standing to sue to address harms that may affect him in the future . . . .").

[68] *See* sources cited *supra* note 51.

[69] The potential for harm to property further increases in areas where homeowners' insurance is less or no longer available because insurers leave the market. *See, e.g.*, Emily Flitter, *Claims Rise, Forcing Cuts by Insurer*, N.Y. TIMES, July 14, 2023, at B1 (describing large insurance companies' retreat from Florida's homeowners' insurance market due to increased climate risk).

[70] *See* Schuman, *supra* note 26, at 42-43 (noting two types of cases where remedy arguments appear: (1) attacks on opponent's immunity from suit and (2) attacks on impermissible deprivation of property or substantive due process).

[71] *See id.* at 42 ("[I]njured parties find themselves in situations where their opponent cannot be sued, and claim a constitutional right to have that immunity judicially removed.").

[72] *See* Schuman, *supra* note 13, at 1202 (noting additional use against statutory immunities including "limits or caps on damages obtainable in medical malpractice actions, or in sovereign immunity statutes that set an upper limit on recoveries against the state").

[73] *See* 1 JENNIFER FRIESEN, STATE CONSTITUTIONAL LAW: LITIGATING INDIVIDUAL RIGHTS, CLAIMS, AND DEFENSES § 6.02[3], at 6-7 (4th ed. 2006) ("Courts generally agree that the constitutional assurance of a remedy for injury does not create any new substantive rights to recover for particular harms. Rather, the clause promises that, for injuries recognized elsewhere in the law, the courts will be open for meaningful redress.").

approach.[74] Further, for reasons discussed below, activist climate suits seeking tort damages might be less effective than those seeking injunctive relief.[75]

The second type of suit would leverage the right-to-remedy provision to bring a Fourteenth Amendment substantive due process violation in state court.[76] Here, the suit's goal is to "attack state action that allegedly injures plaintiffs by impermissibly depriving them of property."[77]

These two types of suits demonstrate Blackstone's understanding of the right to remedy as a subordinate right that can be harnessed to vindicate fundamental property or liberty rights.[78] This understanding also suggests a possible third type of climate right-to-remedy suit. State constitutions grant their citizens a broad array of rights, including those without an analog in the U.S. Constitution. The *Held* plaintiffs relied on precisely such a state-specific right granted by the Montana Constitution.[79] Even though that right to a clean environment appears in only a handful of state constitutions,[80] the right to remedy can be used to vindicate several other state constitutional rights. A concrete example of this third type of suit is discussed in Section III.B below.

4. The Evidence

Following the *Held* model, the evidence presented in a right-to-remedy climate suit should make use of the emerging body of climate data and mapping tools discussed in Section II.B above. Critical types of evidence that could support plaintiffs' claims could include weather attribution reports[81] and climate mapping data[82] that tie the larger effects of climate change to particular instances of harm alleged, or future likelihood of such harm. Depending on the nature of the claim, other datasets such as satellite mapping of sea-level rise,[83] coastline

[74] *See, e.g.*, *infra* note 105 (discussing Oklahoma's case law limiting its right to remedy in this manner).

[75] *See infra* Section III.A.5.

[76] *See* Schuman, *supra* note 26, at 42-43.

[77] *Id.* at 43.

[78] *See* BLACKSTONE, *supra* note 17, at *140.

[79] MONT. CONST. art. II, § 3 ("Inalienable rights. All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness . . . .").

[80] *See infra* Appendix B.

[81] *See* Parshley, *supra* note 50, at 46-47; Zachariah et al., *supra* note 50, at 1.

[82] *See* sources cited *supra* note 51.

[83] *See Sea Level Rise Viewer*, NAT'L OCEANIC & ATMOSPHERIC ADMIN., https://coast.noaa.gov/slr/ (last visited Oct. 9, 2024).

subsidence from aquifer depletion,[84] or oil well sites[85] could also be appropriate. The recent increase in the abundance and specificity of such data improves plaintiffs' ability to articulate cases for specific climate-related injuries.

5. The Remedy

One of the *Held* model's key innovations is the importance of a tailored remedy that limits open-ended judicial intervention while meaningfully curbing state regulatory actions that exacerbate climate change.[86] Carefully selecting a target state agency and policy consistent with the guidelines in Section III.A.1 provides a clear path for a judge to order a discrete, delimited policy change that will mitigate future climate harm.[87]

Right-to-remedy climate suits should prioritize injunctive remedies over money damages. As noted above, one traditional use of right-to-remedy suits has been to overcome state tort immunity.[88] Thus, for plaintiffs who have already suffered physical injury or property damage from extreme weather events, seeking damages from the state for irresponsible climate policies could seem to be an enticing solution. However, such a strategy could negatively impact the activist climate litigation movement over the long term.[89] As Roland Christensen has identified, one of the most durably persuasive strategies used in efforts to restrict tort suits is to paint tort plaintiffs as primarily motivated by personal greed.[90] This suggests two pitfalls of the money damages strategy for right-to-remedy activist climate suits. First, damages suits could provide rhetorical fodder to characterize climate activists as corrupt profiteers, creating public cynicism about the motives of people and organizations attempting to mitigate

[84] *See* Mira Rojanasakul & Marco Hernandez, *The East Coast Is Sinking*, N.Y. TIMES (Feb. 13, 2024), https://www.nytimes.com/interactive/2024/02/13/climate/flooding-sea-levels-groundwater.html#.

[85] *See National Energy and Petrochemical Map*, FRACTRACKER ALL., https://ft.maps.arcgis.com/apps/webappviewer/index.html (last visited Oct. 9, 2024).

[86] *See supra* notes 45-46 and accompanying text.

[87] The Supreme Court has ruled that remedies that reduce greenhouse gas emissions can provide redress for plaintiffs' climate-change-related injuries. *See* Massachusetts v. EPA, 549 U.S. 497, 526 (2007) ("A reduction in domestic emissions would slow the pace of global emissions increases, no matter what happens elsewhere. . . . The risk of catastrophic harm, though remote, is nevertheless real. That risk would be reduced to some extent if petitioners received the relief they seek.").

[88] *See supra* note 27 and accompanying text.

[89] Such a strategy is also vulnerable to quantification problems. It seems more likely that judges would be willing to accept weather attribution statistics to prove that enjoining state regulations will help to mitigate greenhouse gas emissions—as in the *Held* context—than to extend those statistics to find the state's regulations monetarily responsible for a certain percentage of plaintiffs' climate-induced harms.

[90] *See* Roland Christensen, Note, *Behind the Curtain of Tort Reform*, 2016 BYU L. REV. 261, 268-69 (noting prevailing stereotypes of greedy plaintiffs and equally sinister, and factually dubious, greedy lawyers "using" unwitting plaintiffs).

climate change.[91] Given the long-standing public polarization around the response to climate change, this could negatively impact the climate movement as a whole. Second, successful right-to-remedy tort suits that incur large damage awards against states could lead to courts removing the provisions' power to overcome sovereign immunity in order to prevent further suits in the future.[92] Seeking injunctive remedies that will prevent future harm, not only for plaintiffs but also for states' citizens in general, aligns better with the broad goals of the climate movement and circumvents many of the most damaging arguments about plaintiffs' motivations for bringing suit.

B. *Hypothetical Example of a Right-to-Remedy Climate Suit*

What would a hypothetical right-to-remedy climate suit based on these elements look like in practice? A litigator looking to bring such a suit would either need to start with appropriate plaintiffs—individuals who have suffered or are likely to suffer an injury recognized at law—or a regulatory target—a state regulation contributing significantly to the climate crisis that could be enjoined, sparing the state's citizens from ongoing harm from extreme weather events, rising sea levels, or other climate-related impacts.

1. The Target

There are numerous agency regulations across the forty states with right-to-remedy provisions that could be targets for a right-to-remedy climate suit. For instance, a suit could target Oklahoma's Department of Environmental Quality ("DEQ") for failing to track flaring and venting emissions from oil and gas wells, as well as leaked methane from orphan wells.[93] Flaring and venting are routine

[91] For one account of the effort to foster public doubt about the effects of the climate crisis, see NAOMI ORESKES & ERIK M. CONWAY, MERCHANTS OF DOUBT: HOW A HANDFUL OF SCIENTISTS OBSCURED THE TRUTH ON ISSUES FROM TOBACCO SMOKE TO GLOBAL WARMING 169-215 (2010).

[92] Some states' case law already restricts this use of right-to-remedy provisions, suggesting that, if confronted with a new avenue for plaintiffs to bring tort suits against the government, other states might follow suit. *See* Schuman, *supra* note 26, at 48-49 (summarizing case law leading to this restriction in Oregon and concluding "[u]ltimately, the remedy guarantee is judicially balanced away in the name of 'permissible' remedy abolitions").

[93] U.S. DEP'T OF ENERGY, OKLAHOMA NATURAL GAS FLARING AND VENTING REGULATIONS 2 (2022), https://www.energy.gov/sites/default/files/2022-06/2022-oklahoma-state-profile.pdf [https://perma.cc/V5JP-YAAC] ("Permit applications [for non-emergency flaring and venting] include estimates of volumes to be flared or vented, but the state does not aggregate these estimates nor collect actual totals."). "Flaring" is the oil and gas industry's term for burning natural gas directly at the well site rather than harvesting it; "venting" refers to the intentional release of natural gas directly into the atmosphere at the well site. *Gas Flaring*, IEA, https://www.iea.org/energy-system/fossil-fuels/gas-flaring [https://perma.cc/LJ4E-Y4SW] (last visited Oct. 9, 2024). "Orphan" wells are abandoned or

practices at operating wells where either the source of natural gas contains high levels of hydrogen sulfide, a toxic gas, or where the well operator deems it economically infeasible to harvest the gas.[94] Although Oklahoma has permitting regulations requiring well operators to estimate the volume of gas to be vented or flared in limited circumstances, "the state does not aggregate these estimates nor collect actual totals."[95] Venting natural gas contributes to atmospheric methane, which also increases levels of tropospheric ozone,[96] while flaring converts the natural gas into other pollutants and greenhouse gases, including carbon dioxide, carbon monoxide, sulfur dioxide, and nitrogen oxides.[97]

Methane's atmospheric effects are significantly more short-lived than carbon dioxide's, but methane is much more efficient at trapping heat, with "more than 80 times the warming power of carbon dioxide over the first 20 years after it reaches the atmosphere."[98] Methane emissions are responsible for "around 30% of the rise in global temperatures since the Industrial Revolution."[99] The EPA estimates that in 2020, methane emissions from the oil and gas industry accounted for 33% of the United States' methane emissions and 4% of the country's overall greenhouse gas emissions.[100]

Oklahoma is a major producer of oil and natural gas, ranking sixth in production of the thirty-two oil and natural gas-producing states.[101] Failing to track these flaring, venting, and orphan well emissions obscures the extent of Oklahoma's contribution to total national greenhouse gas emissions and allows

unused oil and gas wells with no solvent owner of record capable of preventing methane leaks and remediating the well site; as of 2022, there were 15,531 documented orphan wells in Oklahoma. ENV'T DEF. FUND, MAPPING ORPHAN WELLS IN OKLAHOMA 2 (2022), https://www.edf.org/sites/default/files/2022-11/EDF_FactSheet_OK.pdf [https://perma.cc/9E2G-793N].

[94] *Natural Gas Explained: Natural Gas and the Environment*, U.S. ENERGY INFO. ADMIN. (Nov. 7, 2022), https://www.eia.gov/energyexplained/natural-gas/natural-gas-and-the-environment.php [https://perma.cc/PJ5H-2DHZ].

[95] U.S. DEP'T OF ENERGY, *supra* note 93, at 2. For Oklahoma's venting and flaring regulations, see OKLA. ADMIN. CODE § 165:10-3-15 (2024).

[96] *Global Methane Tracker 2023: Understanding Methane Emissions*, IEA, https://www.iea.org/reports/global-methane-tracker-2023/understanding-methane-emissions [https://perma.cc/VF9M-UGJY] (last visited Oct. 9, 2024).

[97] *Natural Gas Explained: Natural Gas and the Environment*, *supra* note 94.

[98] *Methane: A Crucial Opportunity in the Climate Fight*, ENV'T DEF. FUND, https://www.edf.org/climate/methane-crucial-opportunity-climate-fight [https://perma.cc/9RZ3-KFWL] (last visited Oct. 9, 2024).

[99] *Global Methane Tracker 2023: Understanding Methane Emissions*, *supra* note 96.

[100] *Natural Gas Explained: Natural Gas and the Environment*, *supra* note 94. Troublingly, the Environmental Defense Fund, conducting independent research from 2012 to 2018, estimates that the oil and gas industry's emissions are about 60% higher than the EPA's estimates. *See Methane: A Crucial Opportunity in the Climate Fight*, *supra* note 98.

[101] U.S. DEP'T OF ENERGY, *supra* note 93, at 1. In 2021, the state produced an average of 392,000 barrels of crude oil and over 7 million cubic feet of natural gas per day. *Id.*

the state to escape significant public and federal pressure to reduce its share of emissions.[102] Possible remedies a climate suit could request to address this failure are discussed in Section III.B.5 below.

2. The Plaintiffs

Finding suitable plaintiffs for a right-to-remedy climate suit in Oklahoma would require careful consideration and local expertise, but publicly available data can help focus the search. The ideal plaintiffs would be Oklahoma residents who either have property damaged in extreme weather events attributable to climate change or whose property interests are threatened by encroaching climate change.[103] These types of plaintiffs will likely be found in areas of the state most likely to be affected by an increase in extreme weather events and natural disasters such as wildfires, hailstorms, or straight-line winds. Because unchecked greenhouse gas emissions make such extreme weather events more probable, these types of plaintiffs could plausibly establish standing in a right-to-remedy climate suit.

3. The Legal Claim

Once found, plaintiffs could most likely bring suit under two of the three categories of right-to-remedy suits discussed in Section III.A.3. The first category discussed, a traditional tort suit using the state's right-to-remedy provision[104] to overcome state tort immunity, would be a nonstarter: the Oklahoma Supreme Court has firmly established that the state's right-to-remedy

[102] ENV'T DEF. FUND, *supra* note 93, at 2 ("The EPA estimates that emissions from inactive, unplugged wells, of which documented orphan wells are a subset, range from 7-20 million tons of CO_2 equivalent per year in the form of methane. . . .").

[103] This second category could include homeowners whose home insurance rates have skyrocketed or who cannot secure home insurance because of increased climate risk. Oklahoma is the most expensive state in the country for home insurance, partially due to increased hail damage across the state. *See* Richard Mize, *How You Can Save*, OKLAHOMAN, Sept. 16, 2023, at A1. Further, much of the eastern half of the state is at or above the ninetieth percentile for wildfire risk compared to the rest of the United States, with areas surrounding Tulsa, Broken Arrow, and McAlester at or above the ninety-fifth percentile. *See EJScreen*, *supra* note 51. Although Oklahoma currently experiences six days of extreme wildfire risk per year, climate scientists predict that by the end of the century, that number will be thirty-six days per year. *See* Celia Llopis-Jepsen, *Oklahoma May Face 30 More Days Yearly of High Wildfire Risk as Its Climate Changes*, KOSU (Jan. 8, 2024, 6:00 AM CST), https://www.kosu.org/energy-environment/2024-01-08/oklahoma-may-face-30-more-days-yearly-of-high-wildfire-risk-as-its-climate-changes# [https://perma.cc/V6HK-U2F6].

[104] OKLA. CONST. art. II, § II-6 ("The courts of justice of the State shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale, denial, delay, or prejudice.").

provision cannot defeat sovereign immunity.[105] Bringing suit under the second category, where the right-to-remedy provision works to vindicate plaintiffs' Fourteenth Amendment rights in state court, would be a better option.

Under this claim, plaintiffs would allege that Oklahoma DEQ's failure to track or contain emissions from venting, flaring, and orphan wells has significantly exacerbated the likelihood and severity of extreme weather events in the state by accelerating the climate crisis, thus impermissibly depriving plaintiffs of their property interests. Oklahoma's case law appears underdeveloped on this strategy, providing little guidance on how a right-to-remedy climate suit would fare in the courts.[106] More broadly, using the right-to-remedy provision to seek state court vindication of federal rights appears to carry some inherent unpredictability and, therefore, risk.

Thus, the third category discussed in Section III.A.3 above—using the right-to-remedy provision to vindicate another state constitutional right—might be the most promising avenue for a climate suit. For instance, rather than relying on Federal Fourteenth Amendment rights, plaintiffs could instead base their claim on the Oklahoma Constitution's due process clause.[107] Here, plaintiffs would allege that Oklahoma DEQ's failure to enact a regulation tracking venting, flaring, and orphan well emissions has deprived plaintiffs of their property interests without substantive due process. Alternatively, plaintiffs could argue that their property interests have been taken or damaged for the private use of the oil and gas companies relieved of the regulatory burdens of tracking their emissions.[108] More tenuously, plaintiffs could argue that the effects of the climate crisis exacerbated by Oklahoma's failure to track venting, flaring, and orphan well emissions interfere with their constitutional right to hunt, fish, trap,

[105] *See* Neal v. Donahue, 611 P.2d 1125, 1129 (Okla. 1980) ("[W]e once again . . . rule that the doctrine of sovereign immunity is not violative of Article II, Section 6, of the Oklahoma Constitution."); Griggs v. State *ex rel*. Okla. Dep't of Transp., 702 P.2d 1017, 1019 (Okla. 1985) ("[R]eaffirm[ing] . . . previous holdings that sovereign or governmental immunity violates neither Art. 2 §§ 6 and 7, Okla. Const., nor the Fourteenth Amendment to the United States Constitution.").

[106] In the most applicable case, the owner of an Oklahoma taxi company sought to appeal a successful workers' compensation claim by one of the company's cabdrivers but was unable to post a bond for the "accrued portion of the award and interest at the rate of 18% per annum from the award date." Elam v. Workers' Comp. Ct. of State, 659 P.2d 938, 939 (Okla. 1983). The suit alleged that the bond requirement violated the right-to-remedy provision by preventing plaintiff from arguing his Fourteenth Amendment right to equal protection in state court. *Id.* The court ruled against the company owner, finding that the bond requirement was "reasonably tailored to safeguard [the cabdriver's] property interests" in the workers' compensation award and that such bond requirements "are uniformly applied." *Id.* at 940.

[107] OKLA. CONST. art. II, § II-7 ("No person shall be deprived of life, liberty, or property, without due process of law.").

[108] OKLA. CONST. art. II, § 23 ("No private property shall be taken or damaged for private use, with or without compensation, unless by consent of the owner . . . .").

and harvest game and fish.[109] While an Oklahoma court might be less inclined to find a direct causal link between climate harm and a right that merely allows (rather than guarantees) hunting, fishing, and trapping than it would for alleged violations of other state constitutional rights, this example nevertheless showcases the creative potential for vindicating state constitutional rights using the right-to-remedy provision.

4. The Evidence

The evidence presented in any right-to-remedy climate suit would necessarily be intimately tied to the fact pattern alleged by plaintiffs. For the Oklahoma suit envisioned here, evidence would ideally include detailed documentation of phenomena such as fish kills, extreme weather events, or natural disasters, along with scientific data supporting the probability of their increased occurrences in the future; weather attribution reports tying the severity of these events to the acceleration of climate change; historical, current, and projected future property valuations of plaintiffs' property at issue; mapping data showing the increased risks to plaintiffs' property over time; third-party mapping data showing oil and gas well emissions in the state;[110] flaring and venting volume estimates collected from oil and gas wells in Oklahoma collected pursuant to the relevant regulations;[111] EPA emissions estimates for the state; third-party data demonstrating the EPA's underestimation of emissions from oil and gas producers; and similar data linking the effects of the climate crisis in Oklahoma

[109] OKLA. CONST. art. II, § II-36 states:

> All citizens of this state shall have a right to hunt, fish, trap, and harvest game and fish, subject only to reasonable regulation as prescribed by the Legislature and the Wildlife Conservation Commission. . . . Traditional methods, practices and procedures shall be allowed for taking game and fish that are not identified as threatened by law or by the Commission. . . . Nothing in this section shall be construed to modify any provision of common law or statutes relating to trespass, eminent domain, or any other property rights.

This could be a more difficult argument to make, given the provision's limitation of the "property rights" implicated. *Id.* Members of federally recognized Native tribes could possibly make effective plaintiffs under this claim if they can argue that the decimation of fish and wildlife populations resulting from climate change (for instance, fish kills from algal blooms in warming waters or areas of drought) interferes with their ability to hunt, fish, or trap using traditional means. *See, e.g.*, Phil Cross, *Fish Kill on River with History of "Environmental Genocide*,*"* FOX 25, https://okcfox.com/news/fox-25-investigates/fish-kill-on-river-with-history-of-environmental-genocide [https://perma.cc/4D94-K2LL] (last updated Aug. 25, 2016, 5:32 PM). Such a claim would present jurisdictional and treaty interpretation issues that are beyond the scope of this Note but warrant further research as an avenue to vindicate traditional tribal rights.

[110] *See, e.g.*, *Bridging the Gap*, METHANESAT, https://www.methanesat.org/satellite/ [https://perma.cc/YSJ5-8VXK] (last visited Oct. 9, 2024) (describing new satellite deployed by Environmental Defense Fund subsidiary to track methane emissions globally, with datasets to be published beginning in 2024).

[111] OKLA. ADMIN. CODE § 165:10-3-15 (2024).

to flaring, venting, and orphan well emissions, and linking climate harms to plaintiffs' property interests.

5. The Remedy

As discussed in Section III.A.5 above, the remedy in this hypothetical right-to-remedy climate suit should be equitable in nature: plaintiffs should seek an injunction requiring Oklahoma's DEQ to track flaring, venting, and orphan well emissions at all well sites in the state and publish the information collected.[112]

Simply requiring the state to track and publish emissions data would bring public attention to the scale of Oklahoma's emissions of methane and other greenhouse gases associated with flaring.[113] This in turn is likely to create public pressure on the well operators to reduce emissions because "environmental watchdog and interest groups have strong incentives to monitor and utilize publicly available information on the environmental performance of regulated enterprises."[114] Thus, even this tailored relief could meaningfully impact Oklahoma's methane emissions, reducing the risk of injury to plaintiffs.[115]

C. *Coordinating Successful Right-to-Remedy Climate Suits Nationwide*

One reason why state right-to-remedy provisions offer an attractive legal mechanism for climate litigation is their presence in so many state constitutions. Because four out of every five states have a version of the right-to-remedy provision in their constitution,[116] litigators have a large field of venues to choose from when deciding to bring right-to-remedy climate suits. More research must be done on each states' right-to-remedy case law to determine the most advantageous states for this type of climate suit. In states where the courts have demonstrated their willingness to shrink the right when cases suggest novel

[112] A more ambitious proposal would enjoin the state from allowing non-emergency venting and flaring at all, but this strategy seems significantly less likely to succeed in Oklahoma's state courts. Flaring and venting are routine procedures in the oil and gas industry, and Oklahoma would surely argue that banning those sources of emission would put the state at a competitive disadvantage relative to other oil- and gas-producing states.

[113] The DEQ regulation that would be propagated pursuant to an injunction would presumably be subject to the same notice and public comment requirements as any other Oklahoma DEQ rulemaking. *See generally* OKLA. STAT. tit. 75 (2024) (defining procedures for agency rulemaking). This would not only increase public awareness of the new regulation but would allow climate activists to further shape the regulation beyond the initial injunction through the use of public comments.

[114] David W. Case, *Corporate Environmental Reporting as Informational Regulation: A Law and Economics Perspective*, 76 U. COLO. L. REV. 379, 422 (2005).

[115] *See* Massachusetts v. EPA, 549 U.S. 497, 526 (2007) (holding partial remediation of climate injury valid as use of judicial authority).

[116] *See infra* Appendix C.

applications of it, caution must be the watchword to prevent erosion of the right through an unfavorable ruling.[117]

But because so many states have these provisions in their constitutions, right-to-remedy climate suits have the potential to build favorable regulatory outcomes across the country. Each relatively tailored case and favorable outcome can build toward a foundation that, over time, could steer the United States' contribution to climate change closer to zero. Harnessing the outsized influence of certain states' judicial rulings on the courts in other states can help litigators strategically build such a foundation. Jake Dear and Edward W. Jessen have compiled data demonstrating the relative interstate influence of each state's high court.[118] Bringing successful right-to-remedy climate suits in states with influential courts can increase the likelihood of success in other states, especially those in the same region.

The relative influence of state high court decisions is only one factor that must be balanced when assessing where to bring right-to-remedy climate suits. The ideal state would have an optimal combination of factors that include robust case law supporting the right to remedy, other robust state constitutional protections in areas such as due process and property rights, lax climate-related regulations, an influential court system, and a high risk of extreme weather events due to climate change. Thus, while California and Washington have the most influential high courts and are at high risk for climate harm, they are also states that have been at the forefront of state-level climate regulation, making them less ideal states to bring suits in. On the other hand, Oklahoma, though it ranks a comparatively modest eleventh in terms of high court influence,[119] also has a high risk of climate harm, lax climate-related regulations, and case law that can support right-to-remedy suits. On balance, Oklahoma appears to be a stronger candidate for pioneering a right-to-remedy climate suit.[120] Activists could use a suit in Oklahoma to test the litigation model, improving their chances of bringing successful suits in other states with less favorable combinations of relevant factors.

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[117] *See* Schuman, *supra* note 26, at 57 (describing Oregon's willingness to narrow state's provision on public policy grounds).

[118] *See* Jake Dear & Edward W. Jessen, *"Followed Rates" and Leading State Cases, 1940-2005*, 41 U.C. DAVIS L. REV. 683, 694 (2007) (showing number of high court decisions that have been followed by out-of-court state since 1940 for all fifty states).

[119] Based on the total number of state high court decisions that have been followed at least once by an out-of-state court between 1940 and 2005. *See id.* at 694 graph 1.

[120] Additionally, Washington and California both have reputations as progressive states with strong roots for climate activism; bringing the first such suit in a state without that reputation, like Oklahoma, could create a bigger public reaction nationally, bringing awareness to right-to-remedy climate suits as a mechanism for climate activism.

CONCLUSION

Held v. State offers an innovative model for bringing successful climate litigation. The case identifies three key insights for such litigation. First, state constitutions potentially offer litigants a broader palette of rights on which to bring climate suits than those in the U.S. Constitution. Second, climate suits targeting state regulatory actions that exacerbate climate change can fruitfully vindicate those state-guaranteed rights. Third, bringing large-scale climate data to bear on those targeted state regulatory actions can help judges draw a causal chain between the state's actions and localized climate harms within the state's borders. Together, these insights combine to form a potent model for climate litigation.

Held was brought under Montana's constitutional clean environment guarantee, a relatively rare state right. Thus, litigators looking to extend the *Held* model nationwide must find other state-guaranteed rights that can support climate suits. The right to remedy provides such an avenue in forty states by guaranteeing a judicial remedy for claims vindicating fundamental rights. Thus, right-to-remedy climate suits could use the provision to overcome state tort immunity, bring Fourteenth Amendment claims in state court, or leverage other unique state rights, paving the way for plaintiffs to seek the type of injunctive relief against state agencies suggested by the *Held* model.

This Note offers a blueprint for bringing right-to-remedy climate suits. While it is impossible to predict many of the details of such suits in the abstract, the elements and hypothetical example described here provide a framework for building cases along the *Held* model. The accelerating pace of the climate crisis demands that creative solutions be deployed wherever possible. State-level right-to-remedy climate litigation based on the *Held* model offers one such solution. While such suits will not stop climate change by themselves, they fit squarely within a broader framework of legal and activist strategies pressuring governments to work harder to save the planet and us.

APPENDIX A: TABLE OF STATE CONSTITUTIONAL RIGHT-TO-REMEDY AND ENVIRONMENTAL GUARANTEE PROVISIONS

The numbers in the chart below refer to the provisions' categorizations in Appendix C.

State	Right to Remedy	Environ-mental Guarantee	State	Right to Remedy	Environ-mental Guarantee
Alabama	1		Montana	1	X
Alaska			Nebraska	1	
Arizona	3		Nevada		
Arkansas	2		New Hampshire	2	
California			New Jersey		
Colorado	1		New Mexico		
Connecticut	1		New York		X
Delaware	1		North Carolina	1	
Florida	1		North Dakota	1	
Georgia	2		Ohio	1	
Hawaii		X	Oklahoma	1	
Idaho	1		Oregon	1	
Illinois	2	X	Pennsylvania	1	X
Indiana	1		Rhode Island	2	
Iowa			South Carolina	1	
Kansas	2		South Dakota	1	
Kentucky	1		Tennessee	1	
Louisiana	1		Texas	1	
Maine	2		Utah	1	
Maryland	2		Vermont	2	
Massachusetts	2	X	Virginia		

State	Right to Remedy	Environmental Guarantee	State	Right to Remedy	Environmental Guarantee
Michigan			Washington	3	
Minnesota	2		West Virginia	1	
Mississippi	1		Wisconsin	2	
Missouri	1		Wyoming	1	

APPENDIX B: STATE CONSTITUTIONAL ENVIRONMENTAL GUARANTEES

HAW. CONST. art. XI, § 9: "Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources. Any person may enforce this right against any party, public or private, through appropriate legal proceedings, subject to reasonable limitations and regulation as provided by law."

ILL. CONST. art. XI, § 1: "The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy."

ILL. CONST. art. XI, § 2: "Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law."

MASS. AMENDS. art. XCVII: "The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose.

The general court shall have the power to enact legislation necessary or expedient to protect such rights.

In the furtherance of the foregoing powers, the general court shall have the power to provide for the taking, upon payment of just compensation therefor, or for the acquisition by purchase or otherwise, of lands and easements or such other interests therein as may be deemed necessary to accomplish these purposes.

Lands and easements taken or acquired for such purposes shall not be used for other purposes or otherwise disposed of except by laws enacted by a two thirds vote, taken by yeas and nays, of each branch of the general court."

MONT. CONST. art. II, § 3: "All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment

and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities."

N.Y. CONST. art. I, § 19: "Each person shall have a right to clean air and water, and a healthful environment."

PA. CONST. art. I, § 27: "The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people."

APPENDIX C: STATE CONSTITUTIONAL RIGHT-TO-REMEDY PROVISIONS

A. *First Category*[121]

ALA. CONST. art. I, § 13: "That all courts shall be open; and that every person, for any injury done him, in his lands, goods, person, or reputation, shall have a remedy by due process of law; and right and justice shall be administered without sale, denial, or delay."

COLO. CONST. art. II, § 6: "Courts of justice shall be open to every person, and a speedy remedy afforded for every injury to person, property or character; and right and justice should be administered without sale, denial or delay."

CONN. CONST. art. 1st, § 10: "All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay."

DEL. CONST. art. I, § 9: "All courts shall be open; and every person for an injury done him or her in his or her reputation, person, movable or immovable possessions, shall have remedy by the due course of law, and justice administered according to the very right of the cause and the law of the land, without sale, denial, or unreasonable delay or expense. Suits may be brought against the State, according to such regulations as shall be made by law."

FLA. CONST. art. I, § 21: "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay."

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[121] These categorizations follow Friesen's sorting of state constitutions' right-to-remedy provisions into two broad categories based on similarities in their wording. Those in the first category follow Delaware's wording, the oldest example among state constitutions. The second category has similar but distinct wording, while a third category, consisting only of Arizona's and Washington's provisions, derives from the second category and represents, as Friesen suggests, a purely procedural right that offers fewer protections than the provisions in the first two categories. *See* FRIESEN, *supra* note 73, at § 6.02[1], at 6-3 to 6-4 n.11. However, the only deviation from Friesen's sorting is for Georgia's provision, which Friesen sorted in the first category.

IDAHO CONST. art. I, § 18: "Courts of justice shall be open to every person, and a speedy remedy afforded for every injury of person, property or character, and right and justice shall be administered without sale, denial, delay, or prejudice."

IND. CONST. art. 1, § 12: "All courts shall be open; and every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay."

KY. CONST. § 14: "All courts shall be open, and every person for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay."

LA. CONST. art. I, § 22: "All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay, for injury to him in his person, property, reputation, or other rights."

MISS. CONST. art. 3, § 24: "All courts shall be open; and every person for an injury done him in his lands, goods, person, or reputation, shall have remedy by due course of law, and right and justice shall be administered without sale, denial, or delay."

MO. CONST. art. I, § 14: "That the courts of justice shall be open to every person, and certain remedy afforded for every injury to person, property or character, and that right and justice shall be administered without sale, denial or delay."

MONT. CONST. art. II, § 16: "Courts of justice shall be open to every person, and speedy remedy afforded for every injury of person, property, or character. No person shall be deprived of this full legal redress for injury incurred in employment for which another person may be liable except as to fellow employees and his immediate employer who hired him if such immediate employer provides coverage under the Workmen's Compensation Laws of this state. Right and justice shall be administered without sale, denial, or delay."

NEB. CONST. art. I, § 13: "All courts shall be open, and every person, for any injury done him or her in his or her lands, goods, person, or reputation, shall have a remedy by due course of law and justice administered without denial or delay, except that the Legislature may provide for the enforcement of mediation, binding arbitration agreements, and other forms of dispute resolution which are entered into voluntarily and which are not revocable other than upon such grounds as exist at law or in equity for the revocation of any contract."

N.C. CONST. art. I, § 18: "All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay."

N.D. CONST. art. I, § 9: "All courts shall be open, and every man for any injury done him in his lands, goods, person or reputation shall have remedy by due process of law, and right and justice administered without sale, denial or delay.

Suits may be brought against the state in such manner, in such courts, and in such cases, as the legislative assembly may, by law, direct."

OHIO CONST. art. I, § 16: "All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay. Suits may be brought against the state, in such courts and in such manner, as may be provided by law."

OKLA. CONST. art. II, § II-6: "The courts of justice of the State shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale, denial, delay, or prejudice."

OR. CONST. art. I, § 10: "No court shall be secret, but justice shall be administered, openly and without purchase, completely and without delay, and every man shall have remedy by due course of law for injury done him in his person, property, or reputation."

PA. CONST. art. I, § 11: "All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay. Suits may be brought against the Commonwealth in such manner, in such courts and in such cases as the Legislature may by law direct."

S.C. CONST. art. I, § 9: "All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained."

S.D. CONST. art VI, § 20: "All courts shall be open, and every man for an injury done him in his property, person or reputation, shall have remedy by due course of law, and right and justice, administered without denial or delay."

TENN. CONST. art. I, § 17: "That all courts shall be open; and every man, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay. Suits may be brought against the State in such manner and in such courts as the Legislature may by law direct."

TEX. CONST. art. I, § 13: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law."

UTAH CONST. art. I, § 11: "All courts shall be open, and every person, for an injury done to the person in his or her person, property, or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay; and no person shall be barred from prosecuting or defending before any tribunal in this State, with or without counsel, any civil cause to which the person is a party."

W. VA. CONST. art. III, § 17: "The courts of this State shall be open, and every person, for an injury done to him, in his person, property or reputation, shall have remedy by due course of law; and justice shall be administered without sale, denial or delay."

WYO. CONST. art. I, § 8: "All courts shall be open and every person for an injury done to person, reputation or property shall have justice administered without sale, denial or delay. Suits may be brought against the state in such manner and in such courts as the legislature may by law direct."

B. *Second Category*

ARK. CONST. art. 2, § 13: "Every person is entitled to a certain remedy in the laws for all injuries or wrongs he may receive in his person, property or character; he ought to obtain justice freely, and without purchase; completely, and without denial; promptly and without delay; conformably to the laws."

GA. CONST. art. I, § 1, para. XII: "No person shall be deprived of the right to prosecute or defend, either in person or by an attorney, that person's own cause in any of the courts of this state."

ILL. CONST. art. I, § 12: "Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain justice by law, freely, completely, and promptly."

KAN. CONST. Bill of Rights, § 18: "All persons, for injuries suffered in person, reputation or property, shall have remedy by due course of law, and justice administered without delay."

ME. CONST. art I, § 19: "Every person, for an injury inflicted on the person or the person's reputation, property or immunities, shall have remedy by due course of law; and right and justice shall be administered freely and without sale, completely and without denial, promptly and without delay."

MD. CONST. Declaration of Rights, art. 19: "That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the Land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the Land."

MASS. CONST. pt. I, art. XI: "Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws."

MINN. CONST. art. I, § 8: "Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive to his person, property or character, and to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws."

N.H. CONST. pt. I, art. 14: "Every subject of this state is entitled to a certain remedy, by having recourse to the laws, for all injuries he may receive in his person, property, or character; to obtain right and justice freely, without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws."

R.I. CONST. art. I, § 5: "Every person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which may be received in one's person, property, or character. Every person ought to obtain

right and justice freely, and without purchase, completely and without denial; promptly and without delay; conformably to the laws."

VT. CONST. ch. I, art. 4: "Every person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which one may receive in person, property or character; every person ought to obtain right and justice, freely, and without being obliged to purchase it; completely and without any denial; promptly and without delay; comformably [sic] to the laws."

WIS. CONST. art. I, § 9: "Every person is entitled to a certain remedy in the laws for all injuries, or wrongs which he may receive in his person, property, or character; he ought to obtain justice freely, and without being obliged to purchase it, completely and without denial, promptly and without delay, conformably to the laws."

C. *Third Category*

ARIZ. CONST. art. II, § 11: "Justice in all cases shall be administered openly, and without unnecessary delay."

WASH. CONST. art. I, § 10: "Justice in all cases shall be administered openly, and without unnecessary delay."