



FAQs for a Green Amendment in New York

In late 2016, Hoosick Falls kids helped launch a campaign to ensure a Constitutional right to healthy air, clean water, and a safe climate for all New Yorkers. After years of unknowingly drinking water contaminated with the toxic chemical PFAS, Hoosick Falls residents came together to demand a fundamental right to clean drinking water. Together Delaware Riverkeeper Network, Green Amendments For The Generations, Environmental Advocates of New York & Adirondack Mountain Club are standing alongside Hoosick Falls and other communities across the state to fight for a constitutional right to clean air, clean water, and a healthful environment.

What is a Green Amendment?

Green Amendments are self-executing provisions placed in the Bill of Rights section of a constitution that recognize and protect the inalienable rights of all people, including future generations, to clean water, clean air and healthy environments. A self-executing provision means that no state law is needed to make the right legally enforceable. Green Amendments serve as a check on government authority, and make clear the government's duties to protect and respect the environmental rights of all people.

Does New York have a Green Amendment?

New York State is in the process of securing a Green Amendment to the New York State Constitution. A Constitutional amendment is a multi-year process requiring legislation to be passed by two separately elected state legislatures, followed by a public referendum. The first part of that process was completed in 2019, when the New York State Legislature passed a bill containing the following 15 simple words “each person shall have the right to clean air and water, and a healthful environment.”

The next elected legislature in 2021 must pass the same bill, referred to as “second passage.” The Green Amendment can then be presented to the voters as a referendum on the ballot. The earliest the Green Amendment could appear on a ballot in New York is 2021.

Why do we need a Green Amendment when our state already has a well-developed set of environmental protection laws?

A Green Amendment offers a paradigm shift in the way environmental protection is addressed. While there are thousands of federal and state environmental laws in the statute book, these laws are designed to permit and manage pollution, clean up and remediate contamination, and conserve natural resources. A Green Amendment changes the legal landscape and elevates the fundamental notion that clean air, clean water, and a healthy environment are inalienable and puts in place a constitutional mandate that is a guiding mandate the crafting and implementation of all laws must comply with.

What is more, the need for a preventative mechanism is needed. Despite a comprehensive environmental regulatory framework in place, there have been a significant number of devastating, arguably preventable, environmental issues that have impacted New Yorkers in recent years. For example, across New York communities are discovering their drinking water is contaminated with emerging unregulated contaminants such as PFOA; communities are forced to live next to highly contaminated sites that harm public health and reduce property values; severe air quality issues; and environmental injustice continues to pervade in the state as minority, indigenous, immigrant and low income communities continue to be

targeted for highly polluting and environmentally degrading activities. Altogether, it is clear there are multiple gaps and failures in the law. In addition, poor implementation and politically expedient rollbacks of protections are too commonplace. As we see in other areas of law, such as civil rights, such deficiencies are best addressed by the overarching protections that constitutional protection provides.

How will a Green Amendment affect government decision-making and activities?

A Green Amendment provides broad guidance that ensures government decision-making - substantively and procedurally - considers environmental impacts early in the process when prevention of pollution, degradation and environmental harm is most possible; requires equitable protection of all communities strengthening environmental justice; requires consideration and protection of present and future generations; and considers science, facts and impacts as part of the decision-making process in order to fulfill the government's constitutional obligations. When all else fails, a Green Amendment will provide a backstop that can be used by community, public, government and business interests to provide a check on government authority that overreaches and fails to protect environmental rights. In addition, because it is self-executing, a Green Amendment can help address harms that have not been addressed by existing legislation, regulation, government action or government investment.

How are terms like 'clean water', 'clean air', 'healthful environment' defined? Are these terms too broad for a constitutional provision?

Broad language in a constitution's Bill of Rights is characteristic of all state and federal constitutions. The purpose of the Bill of Rights is to identify those rights that "the people" reserve unto themselves as being protected from government infringement. The terms 'clean water', 'clean air', 'healthful environment' are no less clear than the language in other Bill of Rights provisions, e.g. "Excessive bail shall not be required nor excessive fines imposed", "No member of this state shall be disfranchised" — these on their face are quite broad, but have received definition through government action and judicial determinations.

It is the government's job to seek to provide legislation, regulations, policies, and decision-making that respects and protects the constitutional rights in the first instance. It is then incumbent on the people and the courts to challenge and/or support such decisions through the judicial system, which will provide further refinement, guidance and understanding as to how these terms are to be applied and fulfilled.

Why Must a Green Amendment be Placed in the Bill of Rights Section of the Constitution?

The rights described in the Bill of Rights section are those that are recognized as inalienable and indefeasible human rights that are to be protected from government infringement. Clean air, clean water, and a healthful environment are essential for supporting healthy human lives – including physical health, mental health, and economic health. Bill of Rights placement ensures the highest constitutional and legal protection. Notably, this placement will ensure that environmental rights cannot, as a matter of course, be superseded by claims of property rights; and will ensure priority consideration during all levels of government decision making. Placement in the Bill of Rights also confirms the self-executing nature of the right, and ensures legal enforceability.

Why is a Green Amendment beneficial for environmental justice?

By recognizing environmental rights as individual rights that belong to all people, government must ensure their actions and decisions protect these rights equitably *for all people* regardless of race, ethnicity, religion or income. Green Amendments prevent the government from undermining, sacrificing, or minimizing the rights of one community in order to enhance or protect the rights of another community. As a result, environmental justice communities who have long been sacrifice zones for environmental degradation will have a constitutional right to be treated equitably in all government decision making and actions.

Does a Green Amendment Expand Government Power?

A properly crafted Green Amendment placed within the Bill of Rights will be a *limitation* on government authority, not a grant or expansion of authority. A New York Green Amendment will protect environmental rights by limiting/preventing government actions or activities that – whether through direct government action or the action of others, or through government inaction – inflicts constitutional-level harm on the protected environmental rights.

What states have Green Amendments currently?

Only Pennsylvania and Montana have constitutional language that fulfill the definition of a Green Amendment according to the Green Amendments For The Generations that has coined the term and identified the elements necessary to achieve Green Amendment status. Both states have state Supreme Court rulings that interpret and apply the constitutional language and have given strong recognition to the rights of the people to clean water, clean air and healthy environments.

How can legislators be responsible for protecting the right to clean water and air or a stable climate when these are not entirely within the control of any one state?

Rights enumerated in the Bill of Rights are inalienable rights that the people reserve unto themselves to be protected from government infringement. Just as with other rights in the Bill of Rights, the government has a duty to take what actions it can to protect these rights within its jurisdiction and to ensure that its own actions do not induce, garner or allow for infringement. But just as government officials in one state do not have the power to prevent acts or activities outside the boundaries of their jurisdiction that might overreach and affect constitutional rights in another jurisdiction, the same holds true for environmental rights. Each state is bound to take what action it can to respect and protect the environmental rights of the people within its jurisdiction, to ensure that its actions or activities do not result in infringement, but they are not duty bound (nor are they necessarily able) to take or prevent actions outside of their jurisdictional boundaries (e.g. state borders) in order to address/prevent infringement in other jurisdictions (e.g. states).

Does a State Green Amendment mean that state government actions/activities/laws can never infringe on the constitutional environmental right?

No. As well-explained by the Montana Supreme Court, when a fundamental right articulated in the Bill of Rights/Declaration of Rights section is at issue, court review requires strict scrutiny, meaning that any demonstrated infringement can only withstand constitutional challenge if “the State establishes a compelling state interest and that its action is closely tailored to effectuate that interest and is the least onerous path that can be taken to achieve the State's objective.” (*Montana Env'tl. Info. Ctr. v. Department of Env'tl. Quality*, 1999 MT 248 (1999).)