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SJR03 Environmental Rights Amendment (Green Amendment): Frequently Asked Questions & Answers

What is a Green Amendment?

Green Amendments are self-executing provisions placed in the Declaration of Rights/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, a stable climate and healthy environments. Green Amendments serve as a check on government authority, and make clear government's duties, as trustee, to protect the environment for the benefit of all the people of the state, including future generations.

How is a Constitutional Amendment Better Than Legislation for Environmental Protection?

Our state and federal constitutions provide the overarching legal structure, principles and obligations to which all branches of government must conform. All government action, including the passage of laws, regulations, policies and programs are done in service to advancing their constitutional obligations – government officials cannot change or violate the constitution, they must honor and implement it. Passage of a New Mexico Green Amendment will ensure that every government official in the state will work to advance environmental protection at every level of the decisionmaking process, rather than wait until the end of the process when the focus is necessarily on acceptance and management rather than prevention.

Having a Green Amendment will help ensure that existing environmental laws and regulations are implemented to their full potential; will provide a basis for advancing new needed protections (whether legislation, regulation or government action); will provide a basis to secure protective government action when a gap in the law is identified (such as the case with PFAS contamination); and will strengthen the ability of communities to gain access to courts (e.g. demonstrate standing or bring a constitutionally-based challenge) when their rights have been infringed upon by government action, inaction and/or activities.

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 NM 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 protected environmental rights.

Why is a Green Amendment beneficial for environmental justice protection?

By recognizing environmental rights as individual rights that belong to all people, it becomes clear that government decisions and actions must protect these rights for *all people* and that government is not entitled to undermine/sacrifice/minimize the rights of one beneficiary community in order to enhance/protect the rights of another beneficiary community.

Including a trust obligation in a Green Amendment ensures that all government officials have a clear fiduciary duty to act with prudence, loyalty and impartiality for the benefit of all beneficiaries, including future generations. The trust obligation ensures a duty of equitable treatment owed to all communities, and creates a constitutional obligation to consider cumulative impacts that includes how the new decision, when added to existing conditions, will affect the environmental rights of those impacted. Given that the fiduciary obligation is owed to all beneficiaries it also prevents the government from justifying harms to one community in order to benefit another.

How is the proposed Green Amendment different than Art XX Section 21?

While New Mexico Article XX Section 21 declares “protection of the state’s beautiful and healthful environment” to be of “fundamental importance to the public interest, health, safety and the general welfare,” by comparison the proposed Green Amendment language will explicitly recognize an independent enforceable, right of the people to a clean and healthy environment. The proposed Green Amendment brings a clear constitutional obligation to prevent environmental pollution and degradation which will provide added opportunities for environmental protection in advocacy and litigation and surpasses the Article XX Section 21 focus on “control of pollution and control of despoilment” of the state’s natural resources. The Green Amendment recognition and protection of the rights of all people, including future generations, to a clean and healthy environment, and the duty of government to ensure equitable protection of all communities regardless of race, ethnicity or socioeconomic status based on a consideration of existing local conditions, cumulative impacts and relevant science provides stronger enforceable mandates to guide government action than is provided by Article XX Section 21’s focus on managing natural resource protection “consistent with the use and development of these resources for the maximum benefit of the people.” The Green Amendment’s added mandate that the constitution should protect the cultural values of the environment is of special importance to indigenous communities and is currently absent from the constitution.

How Will a NM Green Amendment Affect Government Decisionmaking and Activities?

A NM Green Amendment will encourage sustainable, environmentally protective, and innovative development, industry, and business growth.

A NM Green Amendment will provide broad guidance that ensures government decisionmaking - 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; considers the protection of present and future generations; and considers science, facts and impacts as part of the decisionmaking process in order to fulfill the government’s trust obligations. When all else fails, a NM 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 NM Green Amendment can help address community harms that have not been addressed by existing legislation, regulation, government action or government investment.

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, 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).

What states have Green Amendments currently?

Only Pennsylvania and Montana have constitutional language that fulfill the definition of a Green Amendment. Both states have state Supreme Court rulings that interpret and apply the constitutional language in keeping with the legal interpretation and application of other constitutional bill of rights/declaration of rights provisions. (To learn more, see the Green Amendment checklist at: https://www.forthegenerations.org/wp-content/uploads/2020/04/FTG_Checklist-2020-04.pdf)

Does a Green Amendment mean government can never infringe on constitutional environmental rights?

As explained by the Montana Supreme Court, when a fundamental right articulated in the Bill of Rights/Declaration of Rights 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 Envtl. Info. Ctr. v. Department of Envtl. Quality*, 1999 MT 248 (1999).)

How Are Green Amendments Affecting Environmental Protection in Pennsylvania and Montana? Pennsylvania’s Amendment has been used to check legislative overreach that would have put in place automatic waivers of environmental protection standards for fracking, relieved the industry from notification requirements where there was potential drinking water contamination of private wells, and more. PA & MT Green Amendments are also being used to prevent harmful gold mining operations; advance drinking water protections from PFAS contamination; preventing state legislators from raiding environmental protection funds; requiring consideration of science and impacts before permitting environmentally damaging operations; securing cleanup of toxic contamination and more.