



The New Jersey Green Amendment: Giving Constitutional Power to Environmental Justice

It's time for the NJ Constitution to End Environmental Racism!

Here's how the proposed NJ Green Amendment gets us there.

Green Amendments are self-executing provisions added to the bill of rights section of a constitution that recognize and protect the rights of all people, including future generations, to pure water, clean air, a stable climate, and a healthy environment.

Quick Points – The NJ Green Amendment

The proposed New Jersey Green Amendment will give highest constitutional protection for the rights of all people, regardless of race, ethnicity, socio-economic status or generation, to pure water, clean air, a stable climate and healthy environments.

In summary, the New Jersey Green Amendment will:

- √ ... Ensure all communities – regardless of race, ethnicity or income – have the same rights to a clean and healthy environment, requiring government officials to protect all communities equitably No More Environmental Sacrifice Zones;
- √ ... Ensure consideration of existing environmental conditions and cumulative impacts as part of decisionmaking so the additive impact of new pollution/degradation on an already overburdened environmental justice community is a recognized and addressed part of government action – it will not be enough to just understand the information, government must act upon it;
- √ ... Empower environmental justice communities to address unconstitutional infringement on environmental rights such as clean water and air, by providing constitutional grounding for their advocacy and access to the courts for redress;
- √ ... Mandate government loyalty to environmental justice communities and the obligation to equitably protect their environmental rights;
- √ ... Ensure government decisions and action prioritize environmental protection and pollution prevention in order to ensure environmental rights are protected and to advance environmental justice;
- √ ... Fill the gaps in environmental laws and provide a legal basis for securing water, air and environmental protection in those situations where government says it legislatively or regulatorily lacks the authority to strengthen protections for environmental justice communities;

- √ ...Require environmental remediation and restoration when necessary to remedy ongoing infringement on, and loss of, environmental rights;
- √ ... Prohibit infringement on environmental rights of Black, Brown, Indigenous, Latino, Asian/Pacific Islander, Hispanic, immigrant or low income communities in order to protect the environmental interests of other communities, to serve the profit goals of industry, or to achieve political goals of government officials;
- √ ...Place environmental rights legally on par with other fundamental rights, including property rights which are so often used as an excuse to support unjust environmental decisionmaking;
- √ ...Require that environmental rights are protected by every government official at every level of government for both present and future generations.

***NJ's Green Amendment –
Add to Article 1, Rights & Privileges:***

(a) Every person has a right to a clean and healthy environment, including pure water, clean air, and ecologically healthy habitats, and to the preservation of the natural, scenic, historic, and esthetic qualities of the environment. The State shall not infringe upon these rights, by action or inaction.

(b) The State's public natural resources, among them its waters, air, flora, fauna, climate, and public lands, are the common property of all the people, including both present and future generations. The State shall serve as trustee of these resources, and shall conserve and maintain them for the benefit of all people.

(c) This paragraph and the rights stated herein are (1) self-executing, and (2) shall be in addition to any rights conferred by the public trust doctrine or common law.

How/Why It Works – a Deeper Understanding:

- ***Article 1, Rights & Privileges Placement Brings Essential Protections.***

Article 1, Rights & Privileges placement recognizes a constitutionally enforceable limitation on government authority that prohibits infringement on environmental rights, in the same way speech, property, religion and gun rights are protected from government overreach.

Article 1 Rights & Privileges placement ensures environmental rights are protected legally on par with property rights so that property rights claims can no longer be used as the excuse to drive unjust environmental decisionmaking. If both property and environmental rights might be affected by government action then both must be considered, balanced and protected by the final outcome.

Article 1 Rights & Privileges placement recognizing the environmental rights of ALL New Jerseyans to a clean and healthy environment will constitutionally mandate that ALL NJ government officials equitably protect the environmental rights of NJ ALL communities, regardless of race, ethnicity, religion or income, because we all have the same right that must be protected.

Article 1 Rights & Privileges protection ensures that while environmental rights are to be informed by legislation, the constitutional right is different than simply complying with the laws on the books -- if science, cumulative impacts analysis, existing conditions, or environmental justice concerns demonstrate that stronger environmental protections are needed, the constitution can be the basis to ensure they are provided.

Article 1 Rights & Privileges placement ensures informed decision-making is a constitutional pre-requisite to taking action that could infringe upon environmental rights. Informed decisionmaking includes understanding the pollution and industrial burdens a community already bears and the impacts of proposed government action in order to avoid

"The failure to obtain information regarding environmental effects does not excuse the constitutional obligation because the obligation exists a priori¹ to any statute purporting to create a cause of action."¹

unconstitutional violations, targeting and sacrifice of communities of color, indigenous communities and low-income communities.

Article 1 Rights & Privileges placement will allow the constitution to be used to fill the gaps where there is not yet a law to address a serious environmental condition or threat. This ability to rely upon the constitution for needed protections in the absence of existing law is irreplaceably important for environmental justice communities because it means that the constitution can be used to provide greater protections when the laws on the books when environmental rights and justice demands it.

As with other fundamental rights, Article 1 placement ensures that environmental rights can only be infringed upon when there is an identified compelling state interest and demonstrated effort to minimize the infringement on the rights to a clean and healthy environment.

In short Environmental racism is constitutionally prohibited because sacrificing one community, repeatedly, in order to serve the profit goals of industry, the political agenda of a government officials, or protect the environmental rights of other communities with white skin, greater wealth or political connections, does not constitute equitable treatment nor are these constitutionally defensible compelling state interests.

- ***State Trustee Obligation Brings Essential Protections and Clarity of Obligation***

An essential component of the New Jersey Green Amendment is the trust obligation it creates for all NJ government officials.

“As trustee, the [State] is a fiduciary obligated to comply with the terms of the trust and with standards governing a fiduciary’s conduct. The explicit terms of the trust require the government to “conserve and maintain” the corpus of the trust. [] The plain meaning of the terms conserve and maintain implicates a duty to prevent and remedy the degradation, diminution, or depletion of our public natural resources. As a fiduciary, the [State] has a duty to act toward the corpus of the trust -- the public natural resources -- with prudence, loyalty, and impartiality.”¹

Designating the state as the trustee of New Jersey’s natural resources, and identifying all the people, including present and future generations, as the designated beneficiaries creates clear and enforceable fiduciary obligations and will prevent government from repeatedly and intentionally sacrificing Black, Brown, Asian/Pacific Islander, Indigenous, Latino, Hispanic, immigrant and low-income communities, or future generations to environmental degradation.

As trustee, the state will be constitutionally required to fulfill the fiduciary duties of prudence, loyalty, and impartiality in overseeing the state’s natural resources (i.e. the trust) and serving the present and future generations of New Jerseyans (i.e. the beneficiaries of the trust).

- ✓ The duty of prudence requires that government engages in informed decision-making and uses reasonable care and caution when natural resources and environmental rights are implicated – this will require consideration of existing local conditions, applicable science and data, and considering the near term and cumulative impacts of the proposed action as part of the decision-making process (after the fact rationalizations are not acceptable). The fact that a

¹ Robinson Twp., Delaware Riverkeeper Network, et al. v. Commonwealth, 83 A.3d 901 (Pa. 2013), Pennsylvania Supreme Court discussing PA Green Amendment that includes trustee obligation of the state.

community is already over-burdened with water, air or soil contamination will be a required part of decisionmaking.

Notably: unlike other legally required environmental reviews, simply understanding the information is not enough to fulfill the constitutional duty of prudence, the information must be brought to bear on the decisions and actions taken.

- ✓ The duty of loyalty ensures the state's natural resources (i.e. the trust resources) are managed for the benefit of the people/beneficiaries, as opposed to industry or other government goals, and requires a loyalty to all the beneficiaries regardless of race, ethnicity, wealth or generation.
- ✓ The duty of impartiality mandates government protect all communities equitably, ensuring that environmental protection is balanced fairly and justly across all communities regardless of race, ethnicity, socioeconomic status, or generation – no longer can one community be repeatedly sacrificed for the benefit of others.

Creating a trustee/beneficiary relationship between New Jersey government and its people ensures that the obligation to “conserve and maintain” the state's natural resources are an enforceable part of the state's fiduciary obligations to the natural resources and the people of New Jersey, rather than serving merely as guidance.

The duty to “conserve and maintain” - i.e. “prevent and remedy the degradation, diminution, or depletion” – the state's natural resources allows environmental justice communities to address new threatened harms as well as secure remedies to address ongoing harms. While there has to be a present government action to address with a constitutional challenge, permit renewals that allow ongoing pollution contributing to a constitutional violation, or a decision not to act to address an ongoing harmful condition, are both government actions that can be the subject of a constitutional challenge.

The trustee/beneficiary relationship ensures that all parties understand that government has a legal duty to operate in good faith to ensure the state's natural resources are managed consistent with the state's fiduciary obligations.

- ***Added Benefits That Can Add to Environmental Justice Success***

The Green Amendment will require New Jersey government officials, at every level of government, to consider environmental impacts as part of the of the decision-making process, from beginning to end, and prohibits after-the-fact rationalizations to justify environmental justice violations.

The New Jersey Green Amendment is legally self-executing, meaning the terms themselves are legally enforceable, no additional legislation or regulation is required for the constitutional rights and obligations to have legal enforceability.

When government officials fail to fulfill their constitutional obligations, the New Jersey Green Amendment will give aggrieved individuals and communities access to the courts to seek to vindicate the right – no legislation granting access to the courts is needed.

The proposed New Jersey Green Amendment focuses government on preventing pollution and environmental degradation rather than simply managing it through permitting.