

THE GREEN AMENDMENT

An Idea Whose Time It Has Always Been

Almost exactly forty years ago, the great Supreme Court Justice William Brennan authored a groundbreaking law review article, *State Constitutions and the Protection of Individual Rights*, 90 Harvard L. Rev. 489 (1977). Justice Brennan wrote at a time when attorneys and civil rights activists looked almost exclusively to the U.S. Constitution and the federal judiciary for protection of fundamental rights. His focus, as the title suggests, was on individual freedoms associated with the Bill of Rights, like due process, equality, and free expression. But Justice Brennan worried about a growing tendency of the federal courts to back away from the expansion and protection of Constitutional rights that had begun in 1954 with *Brown vs. Board of Education*. Justice Brennan would have even graver concerns today, as the trend he detected in its early stages has now become dominant, with a “conservative” majority on the Supreme Court increasingly deferential to corporate interests and more and more willing to elevate those interests above the concerns of everyday citizens.

Justice Brennan’s prescription was for individuals to reinvigorate the rights enunciated in America’s state constitutions – many of them older than the federal document. Because the state charters were closer to the governed, Justice Brennan believed they could provide an important buffer, not only protective of traditional rights, but capable also of inspiring a better, more expansive view of the U.S. Constitution itself.

Maya K. van Rossum is a local environmentalist who has been the Delaware Riverkeeper for more than 20 years [full disclosure: Williams Cedar attorneys have represented the Delaware Riverkeeper Network in environmental litigation]. van Rossum’s new book, *The Green Amendment* (Disruption Books, 2017) represents a logical outgrowth of Justice Brennan’s thesis, applied in a new context: the protection of the community’s right to a clean environment. van Rossum takes the reader on a terrifying tour of environmental catastrophes that have been significantly enabled by failures of the federal government to take the steps necessary to prevent them. She raises the hope that environmental rights provisions in state constitutions might elevate to fundamental status the public’s right to environmental health.

As van Rossum points out, the Pennsylvania Constitution’s Article 1, Section 27 is perhaps the strongest of all the state provisions. It declares that the “people have a right to clean air, pure water, and the preservation of ...the environment” and makes public natural resources “the common property of all the people”, charging the state to act as trustee for those resources. Historically, the Pennsylvania E. R. A. was treated as a mere aspirational statement, unable either to check corporate practice or to compel governmental action. But in three important decisions in 2013, 2016 and 2017, the Supreme Court of Pennsylvania held that Article I § 27 both empowered local communities to restrict destructive practices like massive “fracking”, and required the Commonwealth to allocate money it collected from corporations as environmental fines to environmental purposes, and not to the general budget. van Rossum points out that the “environmental constitutionalism” unleashed by these state court decisions will give environmental activists a new weapon in their fight for what, at least in Pennsylvania, is no longer a wish, but a “right to pure water, clean air, and a healthy environment.”

Activists and their attorneys will want to understand and advance the full import of this new environmental constitutionalism. *The Green Amendment* is a good place to start.

For more information, call our *environmental lawyers* at *Williams Cedar* at *215-557-0099* or *contact us online*.

Author of this blog, *Gerald J. Williams, Esq.*, is quoted in *The Green Amendment*.