



Maryland's Green Amendment: **A Constitutional Amendment for Environmental Health & Justice**

What is a Green Amendment?

Green Amendments are self-executing provisions placed in the Declaration of Rights section of a constitution that recognize and protect the inalienable rights of all people, including future generations, to pure 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, regardless of their race, ethnicity, income level, or physical or mental capacities. The proposed MD Constitutional Amendment for Environmental Health & Justice is our state's version of the Green Amendment concept.

How is a Constitutional Amendment Better Than Legislation?

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 the MD Constitutional Amendment for Environmental Health & Justice will ensure that every government official in the state will work to advance environmental protection at every level of the decision-making process, rather than wait until the end of the process when the focus is necessarily on acceptance and management rather than prevention.

Having a constitutional amendment will help ensure that existing laws and regulations are implemented to their full potential when it comes to environmental protection; 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 the courts (i.e. demonstrate standing) when their rights have been infringed upon by government action, inaction and/or activities.

Does the Proposed Maryland Amendment Expand Government Power?

The MD Constitutional Amendment for Environmental Health & Justice as written and if placed within the Declaration of Rights of the state constitution, is a *limitation* on government authority, not a grant or expansion of authority. As such, the Amendment protects 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.

Maryland Has a Robust System of Environmental Laws, Why Do We Need Something More?

Despite Maryland's existing environmental protection laws which embrace a review and permitting approach to environmental protection, we face significant environmental problems, including, but not limited to, contaminated drinking water, communities living next to highly contaminated sites that are harming human health and reducing property values, and air pollution causing asthma attacks in children and harming the health of Maryland communities. Not only do our state laws allow significant harms on a case by case basis, but they are allowing cumulative impacts to go unconsidered and unaddressed. In addition, communities of color and low income communities continue to be unfairly targeted for highly polluting industry, while gaps in the law are allowing harmful pollution and environmental degradation to advance unaddressed. As we see in other areas of law, such as civil rights, these deficiencies can best be addressed by the overarching protections provided by the state constitution's declaration of rights.

How Does a Green Amendment help communities meet standing requirements when seeking environmental redress?

Currently, Maryland has a patchwork of environmental standing laws that only provide standing in limited situations, most notably standing is often limited to people who are directly impacted by government decisions

and actions and when there are specific impacts to property rights, economic harms, or for recipients who have sought but been denied a permit. But standing is often difficult, if not outright prohibited, for those that don't live adjacent to the impacted area or operation to bring a challenge even if there is going to be a profound and meaningful impact on their water, air or environment. Creating a constitutional right to healthy environments will support standing when there is a claim that the government has acted in a way that will infringe on constitutional environmental rights – e.g. have contaminated the water or air in dangerous ways that harm human health for surrounding communities -- even if there is no specific regulation or law that would otherwise allow impacted individuals or communities to bring a legal challenge to the specific government action taken.

And notably, standing rights enumerated through legislation or regulation, unlike fundamental constitutional rights, can be altered or taken away by the legislature at any time. Constitutional rights cannot be waived or displaced by acts of the legislature; when there is a defensible claim of infringement on a constitutional right there is a constitutional right to seek redress in the courts by those who are impacted. What that means is that when a government action is going to pollute the water or air, or harm the environment in ways that could be deemed unconstitutional, impacted people can go to court to challenge that government action, even if there is no specific law or regulation that otherwise allows a challenge to the permit issued or decision made.

How Are Green Amendments Affecting Environmental Protection in Pennsylvania and Montana?

Pennsylvania's Amendment was used in 2013 to strike down key provisions of a pro-fracking law that, amongst other things, provided the industry automatic waivers from environmental protection standards; mandated that fracking be allowed in residential, historic preservation, environmental protection and farming districts; and relieved the fracking industry from notification requirements where there was potential drinking water contamination of private wells. Green Amendments in place in Montana and Pennsylvania are also being used to defeat harmful gold mining operations; to prevent the harmful spreading of sewage sludge where it will affect residential communities and exceptional value streams; preventing state legislators from raiding environmental protection funds for other uses; forcing consideration of science and impacts before permitting environmentally damaging operations and more.

How Will the Amendment Affect Government Decision-making and Activities?

The MD Constitutional Amendment for Environmental Health & Justice lays out and 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 trust obligations. When all else fails, a MD 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, the proposed MD Green Amendment can help address community harms that have not been addressed by existing legislation, regulation, government action or government investment.

How are terms like 'pure water', 'clean air', 'ecologically healthy habitats', a 'stable climate' defined? Aren't these terms too broad for a constitutional provision?

Broad language in a constitution's Declaration of Rights is characteristic of all state and the federal constitutions. The purpose of the Declaration of Rights is to identify those rights that "the people" reserve unto themselves as being protected from government infringement. The terms 'pure water', 'clean air', 'ecologically healthy habitats', a 'stable climate' are no less clear than the language in other Declaration of Rights provisions.

How can the State be the trustee of natural resources that cross State and national borders?

Just as with other rights in the Declaration of Rights, government has a duty to take what actions it can within its jurisdiction to protect the enumerated rights and to ensure that its own actions do not induce, garner or allow for infringement. Each state is bound to take what action it can to protect environmental rights within its jurisdiction but they are not duty bound to take or prevent actions outside of their jurisdictional boundaries (e.g. state borders) in order to address/prevent infringement.

Will the Proposed Amendment halt commercial, energy, or economic development in the MD?

No. Instead, it will encourage sustainable, environmentally protective, and innovative development, industry, and business growth.