

**SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, FOURTH DEPARTMENT**

Partnership for the Public Good, Inc., et al.,

Petitioners-Appellants,

v.

City of Buffalo, et al.,

Respondents-Appellees.

NOTICE OF MOTION

Docket No. CA-25-00312

PLEASE TAKE NOTICE that upon the annexed Affirmation of Kacy C. Manahan, Esq. affirmed October 24, 2025, and the accompanying proposed brief of *amici curiae*, and upon all papers, pleadings, and proceedings had herein, Green Amendments for the Generations and Delaware Riverkeeper Network will move this Court on November 10, 2025, or as soon thereafter as counsel may be heard at the M. Dolores Denman Courthouse located at 50 East Avenue, Suite 200, Rochester, for an order granting them leave, pursuant to 22 NYCRR 1250.4 [f] and 850.4 [d], to serve and file a brief of *amici curiae*, in support of reversal.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR § 2214 [b], answering affidavits and notices of cross-motion, if any, must be served upon the undersigned attorney at least seven days prior to the return date of this motion.

Dated: October 24, 2025



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**SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, FOURTH DEPARTMENT**

Partnership for the Public Good, Inc., et al.,

Petitioners-Appellants,

v.

City of Buffalo, et al.,

Respondents-Appellees.

**AFFIRMATION OF KACY
C. MANAHAN, ESQ**

Docket No. CA-25-00312

KACY C. MANAHAN, ESQ. an attorney at law duly admitted before the courts of the State of New York, hereby affirms the following under penalty of perjury:

1. I am counsel for proposed *amici curiae* Green Amendments for the Generations and Delaware Riverkeeper Network. I am fully familiar with the facts and circumstances of this matter.

2. Proposed *amici* have an interest in the issues to be resolved in this litigation, as detailed in the proposed *amici curiae* brief, attached hereto as **Exhibit A**.

3. This Court has the discretion to accept an *amicus curiae* brief provided that the movant submits an affirmation supporting its interests with a proposed brief attached, the case concerns questions of important public interest, the *amici curiae*'s

participation will not substantially prejudice the rights of the parties, and the *amici curiae*'s participation will invite the Court's attention to the law or arguments that might otherwise escape its consideration or otherwise be of special assistance to the Court. (*See Kruger v. Bloomberg*, 1 Misc3d 192 [Sup Ct, New York County 2003].)

4. Proposed *amicus* Green Amendments For The Generations ("GAFTG") is a 501(c)(3) education, advocacy, and legal action organization working nationwide to ensure every person and community across the United States is able to experience the health, quality of life, education, joy, and economic prosperity provided by a clean, safe, and healthy environment; to end environmental racism; and to help ensure that nature itself is able to thrive by constitutionally empowering all people to secure and enforce their inalienable human right to pure water, clean air, a stable climate, and healthy ecosystems and environments. GAFTG's work builds upon a legal victory achieved in 2013, in which Founder Maya K. van Rossum, in her role as the Delaware Riverkeeper, the Delaware Riverkeeper Network organization, and seven municipalities working collaboratively, re-invigorated Pennsylvania's long-ignored constitutional environmental rights provision to defeat a devastatingly pro-fossil fuel piece of legislation that was slated to give the industry expanded powers and unleash a new wave of fossil fuel fracking and all its devastating harms across the state. Following this achievement, van Rossum identified the unique characteristics of the

Pennsylvania amendment that allowed for this stunning victory, determined that among the fifty U.S. states only Montana had a similar amendment, and founded GAFTG in order to help communities understand and pursue this powerful protection—what we now call a “Green Amendment”—nationwide. Using the tools of education, community engagement, and legal expertise, GAFTG played a leading role in inspiring and securing the New York Green Amendment. Since its enactment in 2021, GAFTG has provided legal expertise in the appropriate and most effective use of the Green Amendment in litigation and advocacy spaces. GAFTG is currently working with communities and government leaders in over thirty states seeking to secure their own Green Amendment protections, as well as sharing legal expertise to inform and support advocacy and precedent-setting legal actions in Pennsylvania, New York, and Montana.

5. Proposed *amicus* Delaware Riverkeeper Network (“DRN”) is a nonprofit organization established in 1988 to protect, preserve, and enhance the Delaware River, its tributaries, and habitats. DRN has over 1,900 members who live in New York, and over 29,000 members who live, work, and recreate in the Delaware River Basin. DRN has also appeared before numerous Pennsylvania courts and administrative agencies to enforce Pennsylvania’s Green Amendment—article I, section 27 of the Pennsylvania Constitution—and both Maya K. van Rossum, the Delaware Riverkeeper, and her legal team are recognized nationwide as experts on

article I, section 27 jurisprudence. DRN has a special interest in New York’s Green Amendment, as 2,390 square miles of the Delaware River watershed are located in this state.

6. GAFTG and DRN have an interest in ensuring that state constitutional provisions that meet the definition of a Green Amendment—like the provision at issue in this case—are properly interpreted by courts, including recognizing them to be a self-executing restraint on governmental power.

7. This case is of significant public interest because it involves the interpretation and enforceability of Article I, section 19 of the New York Constitution—New York’s Green Amendment. This Court’s ruling is likely to have a statewide impact, and may even impact the interpretation of Green Amendments in other states.

8. *Amici’s* proposed brief provides the Court with arguments that the parties to the action herein have not fully developed in their respective briefs. *Amici’s* proposed brief includes important clarification and insight regarding the nature and enforceability of positive state constitutional rights, which might otherwise escape this Court’s consideration.

9. Counsel for all parties in this case have been consulted and indicated to me that they do not oppose this motion.

I affirm this 24th day of October, 2025, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

A handwritten signature in blue ink, appearing to read 'KACMAN', with a long horizontal flourish extending to the right.

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Exhibit A

Supreme Court of the State of New York
Appellate Division – Fourth Department

In the Matter of the Application of

PARTNERSHIP FOR THE PUBLIC GOOD, INC., HOUSING OPPORTUNITIES
MADE EQUAL, INC., PEOPLE UNITED FOR SUSTAINABLE HOUSING, INC.,
CENTER FOR ELDER LAW & JUSTICE, INC., DOROTHY OATMEYER, KRYSTAL
CRUZ, DENITA ADAMS, and VICTORIA RING, on behalf of themselves and
of all others similarly situated
Petitioners-Appellants,

v.

THE CITY OF BUFFALO, BYRON BROWN, MAYOR OF THE CITY OF BUFFALO,
in his Official Capacity, AND CATHERINE AMDUR, COMMISSIONER OF
PERMIT AND INSPECTION SERVICES FOR THE CITY OF BUFFALO, in her
Official Capacity,
Respondents-Appellees,

For a Judgment Pursuant to § 3001 and Articles 9 and 78 of the Civil Practice Law
and Rules.

BRIEF OF *AMICI CURIAE*
GREEN AMENDMENTS FOR THE GENERATIONS AND
DELAWARE RIVERKEEPER NETWORK IN SUPPORT OF
PETITIONERS-APPELLANTS AND REVERSAL

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Supreme Court, Erie County – Index No. 809862/24

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PRELIMINARY STATEMENT AND INTERESTS OF *AMICI CURIAE*¹

Proposed *amici curiae* Green Amendments for The Generations (“GAFTG”) and Delaware Riverkeeper Network (“DRN”) respectfully submit this brief concerning a certain type of constitutional environmental right defined as a “Green Amendment.” The New York Constitution’s Article I, Section 19 meets this definition.

GAFTG is a 501(c)(3) education, advocacy, and legal action organization working nationwide to ensure every person and community across the United States is able to experience the health, quality of life, education, joy, and economic prosperity provided by a clean, safe, and healthy environment; to end environmental racism; and to help ensure that nature itself is able to thrive by constitutionally empowering all people to secure and enforce their inalienable human right to pure water, clean air, a stable climate, and healthy ecosystems and environments.

Using the tools of education, community engagement, and legal expertise, GAFTG played a leading role in inspiring and securing the New York Green Amendment. Since its enactment in 2021, GAFTG has provided legal expertise in the appropriate and most effective use of the Green Amendment in litigation and advocacy spaces. GAFTG is currently working with communities and government

¹ No party counsel authored any portion of this brief, and no party, party counsel, or person other than *amici curiae* paid for this brief’s preparation or submission. No party has objected to the filing of this brief.

leaders in over thirty states seeking to secure their own Green Amendment protections, as well as sharing legal expertise to inform and support advocacy and precedent-setting legal actions in Pennsylvania, New York, and Montana.

DRN is a nonprofit organization established in 1988 to protect, preserve, and enhance the Delaware River, its tributaries, and habitats. DRN has over 1,900 members who live in New York, and over 29,000 members who live, work, and recreate in the Delaware River Basin. DRN has also appeared before numerous Pennsylvania courts and administrative agencies to enforce Pennsylvania's Green Amendment—article I, section 27 of the Pennsylvania Constitution—and both Maya K. van Rossum, the Delaware Riverkeeper, and her legal team are recognized nationwide as experts on article I, section 27 jurisprudence. DRN has a special interest in New York's Green Amendment, as 2,390 square miles of the Delaware River watershed are in this state.

GAFTG and DRN have an interest in ensuring that state constitutional provisions that meet the definition of a Green Amendment—like the provision at issue in this case—are properly interpreted by courts, including recognition of its self-executing restraint on governmental power that is enforceable through litigation.

Amici each provide an important perspective to this Honorable Court in its interpretation of New York's Green Amendment.

DISCUSSION

New York’s Green Amendment, article I, § 19 of the New York Constitution, guarantees: “Each person shall have a right to clean air and water, and a healthful environment.” This case presents an opportunity for this Court to acknowledge and affirm its role in interpreting and enforcing this fundamental constitutional right. “Constitutional environmental rights . . . are meaningful only to the extent that courts are willing to enforce them based on their text. Otherwise, they are almost entirely aspirational.” (John C. Dernbach, *The Value of Constitutional Environmental Rights and Public Trusts*, 41 Pace Env’t L Rev 153, 160 [2024].)

Amici urge this Court to consider the history of Green Amendments, and to authoritatively interpret article I, § 19 as a self-executing provision that may be judicially enforced when government fails to act, resulting in the violation of constitutional rights.

I. New York’s Green Amendment, like the Green Amendments it was modeled after, is self-executing.

The question of whether New York’s Green Amendment may be judicially enforced by rights-holders has been the subject of recent controversy. (*See Friends of Fort Greene Park v NY City Parks & Rec Dep’t*, 239 NYS3d 457, 489 [Sup Ct, New York County 2025] [holding that New York’s Green Amendment provides a self-executing right]. *But see, e.g., Seneca Lake Guardian, Inc v Seneca Meadows, Inc*, 236 NYS3d 519, 542 [Sup Ct, Albany County 2025] [denying relief where plaintiff sought to “compel ‘an act in respect to which the [administrative agency]

may exercise judgment or discretion” (alteration in original), quoting *Fresh Air for the Eastside, Inc v State*, 229 AD3d 1217, 1220 [4th Dept 2024] [hereinafter *FAFE*]; *Streeter v NY City Dep’t of Env’t Prot*, 213 NYS3d 865, 870 [Sup Ct, Kings County 2024] [finding that the Green Amendment does not alter the government’s obligations under existing laws but rather it “address[es] the issue of standing in environmental cases and require[s] municipal agencies to take appropriate action regarding the amendment’s impact on their decision-making processes”]; *Marte v City of NY*, 2023 NY Slip Op 31198(U), *4-6 [Sup Ct, New York County 2023], [suggesting that the Green Amendment may not be judicially enforceable].) Even federal courts are prematurely declaring that Article I, Section 19 does not provide “a self-executing substantive right that imposes environmental standards above and beyond the state’s preexisting—and robust—environmental regulatory regime.” (*Chan v US Dep’t of Transp.*, US Dist Ct, SD NY, 23 Civ 10365, Liman, J., 2024.) *Amici* ask this Court to clarify that the Green Amendment is indeed self-executing.

New Yorkers who voted for the Green Amendment understood they were changing the way the State would make decisions about the environment, both through its own actions and through its regulatory powers. Voters understood the structural significance of constitutional protection. Having seen the eroding effect of industry lobbyists on environmental regulation, engaged communities throughout the State eradicated the State’s ability to give polluters a “free pass.” (See Robert F.

Williams & Lawrence Friedman, *The Law of American State Constitutions* at 52 [2d ed 2023] [“State constitutional rights provisions, by contrast to the federal guarantees we think of as protecting *minority* and unpopular people, sometimes actually provide *majoritarian* protections.”].) The Green Amendment counterbalances the outsized influence held by a minority of polluters in favor of protecting the environmental rights of all New Yorkers.

Voters chose a constitutional provision that was like other states’ clearly enforceable Green Amendments; they were not adopting a mere policy statement. (*See id.* at 12 [“[P]roper understanding and interpretation of state constitutions must take account of the history of state constitutional provisions [and] the possibility that they were modeled on other states’ provisions.”].) The only other states with provisions that meet the definition of a Green Amendment are Pennsylvania and Montana. (Maya K. van Rossum, *The Green Amendment: The People’s Fight for a Clean, Safe, and Healthy Environment* at 12 [2d ed 2022].) New York’s amendment was developed, advanced and adopted in the wake of a significant legal decision out of Pennsylvania clarifying the value of language meeting the Green Amendment definition. (*See Robinson Twp v Commonwealth*, 83 A3d 901 [Pa 2013] [Castille, CJ, plurality opinion].) An understanding of New York’s Green Amendment is incomplete without this context.

A Green Amendment is self-executing by definition. (*See* van Rossum, *supra*, at 270.) Placement in the constitution’s bill of rights is a key feature of all three Green Amendments—they are limitations on government power. If not, then “limits on governmental power that required an exercise of legislative power for their execution could easily be frustrated by the legislature’s refusal to do so.” (John C. Dernbach, et al, *Robinson Township v. Commonwealth of Pennsylvania: Examination and Implications*, 67 Rutgers U L Rev 1169, 1178 [2015].) The same is true for executive action. Where laws meant to realize environmental rights are unenforced, the amendment provides a mechanism to compel enforcement. To interpret a Green Amendment as merely hortatory would undermine its primary purpose. (*See, e.g.*, Tammy Wyatt-Shaw, *The Doctrine of Self-Execution and the Environmental Provisions of the Montana State Constitution: “They Mean Something”*, 15 Pub Land L Rev 219, 230 [1994] [“State constitutional environmental protection is a clear response to federal legislative and judicial failure to provide such protection.”].)

While all Green Amendments are not identical, and indeed Pennsylvania’s and Montana’s include additional language compared to New York’s, in the following analysis *amici* will focus on the portions of Green Amendments that are directly comparable to New York’s.

A. Pennsylvania’s Green Amendment is self-executing and excepted out of the powers of government.

Pennsylvania’s Green Amendment was approved unanimously by both chambers of Pennsylvania’s General Assembly and then ratified by voters by a margin of four to one in 1971. (*See Robinson Twp*, 83 A3d at 961–62 [Castille, CJ, plurality].) The language, placed deliberately in the Pennsylvania Constitution’s Declaration of Rights, resoundingly enshrined Pennsylvanians’ environmental rights:

The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic, and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

(Pa Const art I, § 27.) Shortly after it was ratified, Pennsylvania’s Commonwealth Court² unequivocally held that the environmental rights in that amendment were self-executing:

The first phrase of Article I, to which Section 27 is a late addition, is a declaration, not of the hope that the Legislature will sanction the rights therein reserved to the people, but that such rights are thereby “recognized and unalterably established”. Article I, Section 25 provides that the rights described in Article I should remain “inviolate”. We find no more reason to hold that Section

² The Commonwealth Court is a statewide court that exercises original jurisdiction over civil actions by or against the Commonwealth government, appellate jurisdiction over certain other cases involving the Commonwealth, and jurisdiction of appeals from state administrative agencies. (*See* 42 Pa Cons Stat § 761–763; Pa Const art V, § 4.)

27 needs legislative definition than that the peoples' freedoms of religion and speech should wait upon the pleasure of the General Assembly.

(*Commw v Nat'l Gettysburg Battlefield Tower, Inc*, 302 A2d 886, 892 [Pa Commw Ct 1973].) Since 1973, no Pennsylvania court has disturbed that holding. (*See Robinson Twp*, 83 A3d at 964 n.52 [clarifying that the Pennsylvania Supreme Court's 1973 *Gettysburg* decision did not alter the Commonwealth Court's conclusion that article I, section 27 was self-executing].) (*See also Pa Env'tl Def Found v. Commw*, 108 A3d 140 [Pa Commw Ct 2015] ["[O]ur decision in *Gettysburg Tower* that the Environmental Rights Amendment is self-executing remains binding precedent."], *rev'd in part on other grounds*, 161 A3d 911 [Pa 2017]; Franklin L. Kury, *The Constitutional Question to Save the Planet* at 60 [2021] ["Fortunately, Judge McPhail ruled that the amendment is self-executing and that ruling remains law today. . . . Legislation authorizing lawsuits under the U.S. Bill of Rights has never been needed, and I saw no need for legislative action to authorize a lawsuit under Article I, Section 27."].)³

Unfortunately, the self-executing power of Pennsylvania's Green Amendment was subsequently and erroneously shackled by the Commonwealth Court, which used a three-part test to gauge compliance with article I, section 27:

³ Franklin L. Kury served in the Pennsylvania House of Representatives in the early 1970s and was the author of, and primary advocate for, Pennsylvania's Green Amendment.

(1) Was there compliance with all applicable statutes and regulations relevant to the protection of the Commonwealth's public natural resources? (2) Does the record demonstrate a reasonable effort to reduce the environmental incursion to a minimum? (3) Does the environmental harm which will result from the challenged decision or action so clearly outweigh the benefits to be derived therefrom that to proceed further would be an abuse of discretion?

(*Payne v Kassab*, 312 A2d 86, 94 [Pa Commw Ct 1973].) The *Payne* test remained the prevailing substantive interpretation of article I, § 27 for four decades, until 2013, when a plurality of the Pennsylvania Supreme Court deemed it “inappropriate to determine matters outside the narrowest category of cases, *i.e.*, those cases in which a challenge is premised simply upon an alleged failure to comply with *statutory standards* enacted to advance Section 27 interests.” (*Robinson Twp*, 83 A3d at 967 [Castille, CJ, plurality] [emphasis added].)

The *Robinson Township* plurality faulted the *Payne* test for, among other things “assum[ing] that the availability of judicial relief premised upon Section 27 is contingent upon and constrained by legislative action.” (*Id.*) Four years later, a majority of the Pennsylvania Supreme Court agreed that the *Payne* test was “unrelated to the text of Section 27” and “strips the constitutional provision of its meaning.” (*Pa Env't Def Found v Commw [PEDF II]*, 161 A3d 911, 930 [Pa 2017].) The *Payne* test was formally rejected and is no longer good law in Pennsylvania.

The Pennsylvania Green Amendment is self-executing primarily because it is explicitly “excepted out of the general powers of government” by virtue of its placement in the Pennsylvania Constitution’s Declaration of Rights. (*See Pa Const art I, § 25.*) This placement is one of the hallmarks of a Green Amendment. “The decision to affirm the people’s environmental rights in a Declaration or Bill of Rights, alongside political rights, is relatively rare in American constitutional law.” (*Robinson Twp*, 83 A3d at 962 [Castille, CJ, plurality].) Chief Justice Castille’s plurality opinion in *Robinson Township* and the Supreme Court’s *PEDF II* provided two important interpretations of art. I, § 27 that illustrate the amendment’s self-executing power. First, compliance with statutes or regulations is not dispositive of compliance with art. I, § 27’s constitutional mandate. Second, judicial relief pursuant to art. I, § 27 does not require enabling legislative action.

The *Robinson Township* plurality reaffirmed that the Green Amendment is self-executing. It confirmed that the first clause of Pennsylvania’s Green Amendment “is neither meaningless nor merely aspirational,” indeed, the “corollary of the people’s Section 27 reservation of right to an environment of quality is an obligation on the government’s behalf to refrain from unduly infringing upon or violating the right, including by legislative enactment or executive action.” (*Id.* at 952.) Furthermore, because § 27 is in the foundational document of government, “the constitutional obligation binds *all* government, state or local, concurrently.” (*Id.*

See also PEDF II, 161 A3d at 931 n.23 [noting that trustee obligations are vested in “all agencies and entities of the Commonwealth government, both statewide and local”].)

The first clause of Pennsylvania’s Green Amendment, which is most linguistically similar to New York’s, “affirms a limitation on the state’s power to act contrary” to the rights. (*Robinson Twp*, 83 A3d at 951 [Castille, CJ, plurality].) And “as with any constitutional challenge, the role of the judiciary . . . includes the obligation to vindicate Section 27 rights.” (*Id.* at 952.) A majority of the Pennsylvania Supreme Court has since confirmed that “while the subject of the right may be amendable to regulation, any laws that unreasonably impair the right are unconstitutional.” (*PEDF II*, 161 A3d at 931 [Pa 2017] [citing *Robinson Twp.*, 83 A3d at 951].) (*See also* John C. Dernbach, *The Environmental Rights Provisions of U.S. State Constitutions: A Comparative Analysis*, in *Environmental Law Before the Courts* [Springer 2023] [“This right, in other words, is a self-executing right against the government.”].)

Although the Pennsylvania Supreme Court has recently affirmed the self-executing nature of the Green Amendment’s public trust clauses, (*see PEDF II*, 161 A3d at 937), the first environmental rights clause is self-executing as well, by virtue of being in the same section of the same article of the Pennsylvania Constitution. (*See Pa Env’tl Def Found v Commw* [*PEDF VI*], 279 A3d 1194, 1199 [Pa 2022]. *See*

also *Pa Env'tl Def Found v Comm* [PEDF IV], 2020 WL 6193643 at *7 [Pa Commw Ct Oct 22, 2020] ["A cause of action arises under the Pennsylvania Constitution for the violation of rights guaranteed under Article I. No affirmative legislation is needed for a vindication of [article I] rights in the civil courts."] [citations omitted] [citing *Erdman v Mitchell*, 56 A 327, 331 [Pa 1903], *aff'd* 279 A3d 1194 [Pa 2022]].) Similarly, New York's Green Amendment, which is included in the Bill of Rights, may not be abridged by government, and may be enforced by the courts of this State. (*See, e.g. People v Barber*, 289 NY 378, 385 [1943])

B. Montana's Green Amendment is self-executing and enforceable through equitable remedies.

Montana's Green Amendment is comprised of two interrelated provisions. The first is located in article II of Montana's Constitution, which is that document's Declaration of Rights. Section 3 provides as follows:

All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing, and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

(Mont Const art II, § 3.) In Montana, "[t]he right to a clean and healthful environment is a fundamental right which government action may not infringe except as permissible under strict constitutional scrutiny." (*Clark Fork Coal v Mont*

Dep't of Nat Res & Conservation, 481 P3d 198, 217 [Mont 2021] [citing *N Plains Res Council, Inc v Mont Bd of Land Comm'rs*, 288 P3d 169, 174 [Mont 2012]].)

This affirmative declaration of rights is the part of Montana's Green Amendment that is most akin to the language of New York's.

The second provision, which was "intended by the constitution's framers to be interrelated and interdependent" with the first, (*Mont Env't Info Ctr v Dep't of Env't Quality [MEIC]*, 988 P2d 1236, 1246 [Mont 1999]), is included in article IX, which addresses Environment and Natural Resources. Section 1, labeled "Protection and improvement," requires that:

- (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.
- (2) The legislature shall provide for the administration and enforcement of this duty.
- (3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.

(Mont Const art IX, § 1.) Although this section provides additional self-executing requirements for the legislature, it does not alter the fact that the rights in article II, section 3 are fundamental, self-executing rights.

Montana's Green Amendment is a "fundamental right" and the Montana Supreme Court has made clear that "any statute *or rule* which implicates that right

must be strictly scrutinized and can only survive scrutiny 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." (*MEIC*, 988 P2d at 1246.) Importantly, this test was based on article II, section 3, which, like New York's article I, section 19, is a stand-alone declaration of environmental rights.

In *Clark Fork*, the Supreme Court of Montana explained that to effect the fundamental right to a clean and healthful environment guaranteed by article II, § 3, article IX, § 1 "expressly requires the state to maintain and improve a clean and healthful environment in Montana and for the Legislature to accordingly provide for the administration and enforcement of this duty by providing adequate remedies for the protection of the environmental life support system from degradation." (*Clark Fork*, 481 P3d at 218 [quoting Mont Const, art IX, § 1] [cleaned up].)

A failure to comply with this requirement "is a violation of the fundamental right to a clean and healthful environment." (*Id.*) As the Supreme Court of Montana has acknowledged,

The fact that a right granted by a constitutional provision may be better or further protected by supplementary legislation does not of itself prevent the provision in question from being self-executing; nor does the self-executing character of a constitutional provision necessarily preclude legislation for the better protection of the right secured, or legislation in furtherance of the purposes, or of the enforcement, of the provision.

(*Gen Agric Corp v Moore*, 534 P2d 859, 862 [Mont 1975] [quoting 16 CJS *Constitutional Law* § 48 [1956].) Thus, regardless of article IX, § 1’s mandates, article II, § 3, declaring a fundamental right to a clean and healthful environment, is a self-executing constitutional provision that binds all state actors.

To protect the fundamental right, Montana must take preventative action—the “Montana Constitution guarantees that certain environmental harms shall be prevented, and prevention depends on forethought.” (*Park Cty Env’t Coun v. Mont Dept of Env’t Quality*, 477 P3d 288, 306 [Mont 2020].) The Montana legislature has endeavored to comply with this affirmative duty in part through its Montana Environmental Policy Act (“MEPA”), (Mont Code Ann §§ 75-1-101–1002). The primary purposes of MEPA are to “provide for the adequate review of state actions in order to ensure that: (a) environmental attributes are fully considered by the legislature in enacting laws to fulfill constitutional obligations; and (b) the public is informed of the anticipated impacts in Montana of potential state actions.” (*Id.* § 75-1-102(1).)

Despite this legislation, however, both the legislation itself and actions taken in compliance with this legislation remain subject to review for constitutionality in Montana courts because of the overriding effect of Montana’s self-executing Green Amendment. Montana constitutional jurisprudence, much like federal constitutional jurisprudence, recognizes that when legislative action implicates *individual* rights,

that legislative action is judicially reviewable. (See *Columbia Falls Elementary Sch Dist No 6 v State*, 109 P3d 257, 260–61 [Mont 2005].) Ultimately, “while the legislature is free to pass laws implementing [self-executing] constitutional provisions, its interpretations and restrictions will not be elevated over the protections found within the Constitution.” (*City of Missoula v Mountain Water Co*, 419 P3d 685, 691 [Mont 2018] [quoting *In re Lacy*, 780 P2d 186, 188 [Mont. 1989]] [cleaned up].)

Like Pennsylvania’s Green Amendment, the Montana Green Amendment binds the state government as a whole, not just the legislature. The Supreme Court of Montana has concluded that even Montana courts are bound by the Green Amendment. In *Cape-France Enterprises v Estate of Peed*, private parties sought to enforce a contract that, in part, required one of the parties to drill a well for water in the vicinity of a plume of groundwater pollution. (29 P3d 1011, 1013–14, 1016 [Mont. 2001].) The court refused to enforce the contract “in the face of substantial evidence that [drilling a well] may cause significant degradation of uncontaminated aquifers and pose serious public health risks” because doing so would “involve the state itself in violating the public’s Article II, Section 3 fundamental rights to a clean and healthful environment.” (*Id.* at 1017.)

Much like the U.S. Supreme Court’s conclusion in *Shelley v. Kraemer*, wherein the Court refused to enforce a restrictive covenant that excluded the sale of property

to members of non-white races, the inability to enforce the contract in *Cape-France* was based on the Montana Green Amendment's carve-out from governmental authority. (See *Shelly v Kraemer*, 334 US 1, 14 [1948] ["It is doubtless true that a State may act through different agencies,--either by its legislative, its executive, or its judicial authorities; and the prohibitions of the [Fourteenth Amendment] extend to all action of the State . . . whether it be action by one of these agencies or by another."] [quoting *Virginia v. Rives*, 100 U.S. 313, 318 [1880]].)

Montana's Green Amendment has a binding effect on administrative agency action as well. (See *MEIC*, 988 P2d at 1249 ["[T]he constitution applies to agency rules as well as to statutes."].) In *Park County*, the Supreme Court of Montana reviewed a decision to vacate a mining exploration license granted to Lucky Minerals, Inc. by the Montana Department of Environmental Quality ("MDEQ") on the basis that MDEQ failed to comply with MEPA by preparing an inadequate environmental assessment rather than a fuller environmental impact statement that would address wolverine and grizzly bear impacts as well as a robust water quality analysis. (See 477 P3d at 292–95.) The trial court vacated the exploration license after finding that a provision in MEPA prohibiting equitable relief violated Montana's Green Amendment. (*Id.* at 302.)

On appeal, MDEQ declined to defend its environmental assessment and agreed that a remand was warranted. (See, e.g., *id.* at 299, 300 [regarding road

improvement impacts and mitigation plans].) However, Lucky Minerals, Inc. and MDEQ argued that the exploration license could not be vacated because of the MEPA provision that prohibited equitable relief. (*Id.* at 302.) The Supreme Court of Montana held that the MEPA provision implicated Montana’s Green Amendment by foreclosing the preventative government action necessary to safeguard environmental rights: “Montanans have a right not only to reactive measures after a constitutionally-proscribed environmental harm has occurred, but to be free of its occurrence in the first place.” (*Id.* at 304.) This means that courts must retain the power to enjoin state action (such as an authorization by an administrative agency) that would otherwise result in a constitutional violation. Because fundamental environmental rights were implicated, the MEPA provision could remain in effect only if it survived a strict scrutiny analysis, which the parties agreed it did not. (*Id.* at 308.) Because a lack of equitable remedies rendered MEPA meaningless, and hamstrung courts from preventing violations of environmental rights, the court declared the provision unconstitutional. (*Id.* at 310.)

If Montana’s Green Amendment was not self-executing, then Montana’s courts would have no authority to evaluate whether the MEPA provision in question complied with the Constitution, nor would the *Park County* court conclude that a *reviewing court* must be able to grant equitable relief to prevent a constitutional violation by an administrative agency. If Montana’s Green Amendment was not self-

executing, the legislature would have unfettered discretion to enact statutes that define (and constrain) the extent of Montanans' right to a "clean and healthful environment." (Mont Const art II, § 3.)

Ultimately, when a constitutional provision such as Pennsylvania's, Montana's, and New York's Green Amendment is self-executing, no branch or subdivision of state government can act contrary to the rights protected therein. Where legislation enacted to protect environmental rights is implemented in a manner that results in a violation of those rights, as Petitioners allege in the instant case, courts can provide relief.

II. The Green Amendment independently binds government entities such as Respondents and may be remedied through a mandamus proceeding

Because the PRI Law itself contains mandatory duties, it can be enforced through a mandamus action. (*See generally* Brief for Petitioners-Appellants at 13–27). Failure to comply with a mandatory legislative duty which results in a violation of environmental rights is unconstitutional. Even if the provisions of the PRI Law were discretionary, however, New York's self-executing Green Amendment circumscribes enforcement discretion. Because a Green Amendment, like other fundamental rights, limits the state's police power, prosecutorial discretion is likewise limited.

While many state entities are creatures of statute and can only act within the bounds of their enabling legislation, constitutional provisions like the Green

Amendment provide additional and overriding restrictions on actions that state entities may take—or fail to take. Especially here, where Respondents have ample regulatory authority, they may not choose to ignore the very constitutional violations sought to be remedied by law. And where inadequate enforcement actions fail to remedy the violation of constitutional rights, then Respondents have yet to comply with their constitutional duty.

A. Green Amendments limit otherwise permissible discretionary actions.

In Pennsylvania, the Public Utilities Commission (“Pa PUC”) is a statewide agency that exercises specific authorities granted to it by statute. At issue in a recent Commonwealth Court decision was the Pa PUC’s adjudication pursuant to the Pennsylvania Municipalities Planning Code Section 619 (53 Pa Cons Stat § 10619), that a proposed gas reliability station was “reasonably necessary for the convenience or welfare of the public” and thus exempt from local zoning requirements. (*See Twp of Marple v Pa Pub Utilities Comm’n*, 294 A3d 965, 968-970 [Pa Commw Ct 2023].)

Petitioners argued the Pa PUC erred when it failed to consider environmental concerns and deemed them to be “outside the purview of Section 619 proceedings.” (*Twp. of Marple*, 294 A3d at 973.) The Commonwealth Court agreed, explaining that “[t]he source of the Commission’s responsibility to conduct [an environmental impact] review in a Section 619 proceeding is not the [Municipalities Planning Code] itself or another statute; rather, it is article I, section 27 of the Pennsylvania

Constitution” (*Id.* at 974.) In order to be constitutionally adequate, a Section 619 proceeding must involve “an appropriately thorough environmental review of a building siting proposal” and the Pa PUC must “factor[] the results into its ultimate determination.” (*Id.*) The Pa PUC’s authority was thus bound not only by statute, but also by Pennsylvania’s Green Amendment.

Subsequent Pa PUC proceedings affirm that compliance with the Green Amendment is an independent legal obligation separate and apart from any enabling statute. (*See, e.g., Application of The York Water Co.*, No. A-2023-3041284, 2024 WL 838480 at *8 [Pa PUC Feb 22, 2024] [authorizing the extension of a water main to a residential service area afflicted with contaminated water in part because Pennsylvanians have a constitutional right to pure water]; *Pa Pub Utilities Comm’n v Philadelphia Gas Works*, No. C-2021-3029259, 2023 WL 8714853 at *143 [Pa PUC Nov 9, 2023] [“The Commission ‘and its adjudicatory decisions and regulations are subject to the [Green Amendment], which is consonant with the Supreme Court’s statement in *PEDF* [II] that all agencies of the Commonwealth are bound by the [Green Amendment].’”, quoting *Twp of Marple*, 294 A3d at 974].) Even where an agency or entity has discretion under a particular statute, the Green Amendment is *still* operative and governs the exercise of that discretion.

The Commonwealth Court of Pennsylvania, in an unpublished decision, recognized that Pennsylvania’s Green Amendment includes a “mandatory, non-

discretionary governmental duty” and that an allegation that the Pennsylvania Department of Environmental Protection (“PADEP”) had been “sitting on its hands regarding enforcement and remediation efforts” at a contaminated site was sufficient to support a mandamus claim. (*Del Riverkeeper Network v Pa Dep’t of Env’t Prot.*, No. 525 M.D. 2017, 2018 WL 3554639 at *5-6 [Pa Commw Ct July 25, 2018].)

The Pennsylvania Environmental Hearing Board (“PAEHB”), an adjudicative administrative agency that hears appeals of PADEP actions, has adopted a standard of review that an appellant must show PADEP’s action was “unlawful, unreasonable, or not supported by our *de novo* review of the facts.” (*Gene Stocker v Commonwealth*, No. 2021-053-L, 2022 WL 17371201 at *7 [Pa Env Hrg Bd Nov 18, 2022].) Unlawful in this context means that PADEP “must have not acted in accordance with all applicable statutes, regulations, and case law, or not acted in accordance with its duties and responsibilities under Article I, Section 27 of the Pennsylvania Constitution.” (*Id.*) Again, the Green Amendment operates as an independent source of law binding on the agency. The PAEHB has explained that “agencies’ duties under Article I, Section 27 are not necessarily coextensive with or limited to ensuring compliance with applicable statutes and regulations” (*Del Riverkeeper Network v Dep’t of Env’t Prot.*, Nos. 2021-108-L, 2021-109-L, 2022 WL 1200101 at *22 [Pa Env Hrg Bd Apr 1, 2022].)

A recent case in the Pennsylvania Commonwealth Court illustrates the effect that a Green Amendment may have even in the context of an applicable regulatory program. Petitioners submitted a complaint to PADEP regarding possible contamination of their water supply by local oil and gas wells. (*Glahn v Dep't of Env't Prot*, 298 A3d 455, 458 [Pa Commw Ct 2023].) After not hearing from PADEP within the 45-day period prescribed by the Oil and Gas Act (58 Pa Cons Stat § 3218 [b]), petitioners appealed to the EHB. (*Glahn*, 298 A3d at 459.) The EHB dismissed the appeal on the basis that PADEP hadn't taken any action from which petitioners could appeal, and petitioners sought review of the dismissal in the Commonwealth Court. (*Id.*)

Although the court agreed that no appealable action had occurred, it opined in dicta that “[b]y failing to issue a decision within the 45-day period, the Department failed to uphold its statutory and constitutional duties to protect the public and the public natural resources from the potential harms from drilling activities.” (*Id.* at 462 n.11, dictum.) The court explained that PADEP’s delay “impaired Petitioners’ right to clean water,” *id.*, and that the “proper recourse to address the Department’s prolonged inaction is a mandamus action” (*Id.* at 464 n.13, dictum.) Essentially, by failing to follow through on a complaint regarding an oil and gas well, PADEP ran afoul of the Green Amendment, which guaranteed to complainants a right to clean water.

Like Pennsylvania’s Green Amendment, the New York Green Amendment guarantees the people a right to clean water and to live in a healthful environment. Government inaction, or lackluster or inept enforcement in the face of unconstitutional environmental harm, especially where that harm is caused by a government-regulated actor, violates the constitution. Even if legislation read in isolation would allow an entity to act in a manner that would fall short of remedying the harm, the Green Amendment operates independently to require government protection of constitutional rights.

B. Mandamus is appropriate where a State entity fails to adhere to its constitutional duty.

It is within the authority of this Court to articulate what government behavior violates Appellants’ environmental rights—whether that behavior is action or inaction—to declare it unconstitutional, and to fashion a remedy that respects the authority and discretion of the Respondents. Doing so does not intrude on prosecutorial discretion because that discretion is firmly bound by constitutional limits.

Although “[g]enerally, the manner by which the State addresses complex societal and governmental issues” such as environmental laws and their enforcement “is a subject left to the discretion of the legislative and executive branches,” the “appropriate forum to determine the respective rights and obligations of . . . parties is in the judicial branch.” (*Klostermann v Cuomo*, 61 NY2d 525, 536 [1984].)

Enforcement discretion involves “a complicated balancing of a number of factors which are peculiarly within [a state entity’s] expertise,” (*FAFE*, 229 AD3d at 1219), but that balancing does not include the decision whether to comply with the constitution, and constitutional compliance is peculiarly within the expertise of the courts.

The Court of Appeals has said that simply because discretion involves “the expenditure of funds and a concomitant allocation of resources,” that discretion is not shielded from judicial review—such a “defense is particularly unconvincing when uttered in response to a claim that existing conditions violate an individual’s constitutional rights.” (*Klostermann*, 61 NY2d at 536-537; *see also Korn v Gulotta*, 72 NY2d 363, 369 [1988] [explaining that the budgetary process, which is subject to the executive and legislative branches’ discretion, is not “per se always beyond the realm of judicial consideration” and that the “court will always be available to resolve disputes concerning the scope of that authority which is granted by the Constitution to the two other branches of the government.”, quoting *Saxton v Carey*, 44 NY2d 545, 551 [1978]].)

To the extent that this Court’s own precedent falls short of recognizing the impact of New York’s Green Amendment on the state’s enforcement discretion, *amici* respectfully suggest that such precedent be overruled. (*See Goodwin v. Pretorius*, 962 NYS2d 539, 545 [4th Dept 2013] [where law has been misunderstood

or misapplied, courts must re-examine whether precedent is correct].) In *FAFE*, this Court, rather than recognizing its role in interpreting and enforcing New York’s Constitution, relied on a U.S. Supreme Court case exploring the limits of the federal Administrative Procedure Act’s judicial review provision to conclude that it is institutionally incapable of declaring that DEC’s inaction resulted in a constitutional violation. (See *FAFE*, 229 AD3d at 1219, citing *Heckler v Chaney*, 470 US 821, 833 n.4 [1985].) *Heckler* is simply not on point with an action seeking to enforce constitutional rights. Even if it was, *Heckler* explicitly declined to address the question of whether “the agency’s refusal to institute proceedings violated any constitutional rights” (*Heckler*, 470 US at 838.)

In federal law, even if an agency action is wholly discretionary and otherwise unreviewable under the Administrative Procedure Act (5 USC § 500 *et seq*), a “colorable constitutional claim” is typically reviewable absent a clear indication from Congress, as removal of such a claim from the judiciary’s purview may itself be constitutionally suspect. (See, e.g., *Webster v Doe*, 486 US 592 [1988], citing *Johnson v Robison*, 415 US 361 [1974].) The same is true in New York. (See, e.g., *Tobin v Ingraham*, 67 Misc2d 990, 993 [Sup Ct, Monroe County 1971] [“[T]he Courts do not judge administrative discretion and ‘it is the settled policy of the courts not to review the exercise of discretion by public officials in the enforcement of State statutes in the absence of a clear violation of some constitutional mandate.’ ”, quoting

Gaynor v Rockefeller, 15 NY2d 120, 131 [1965]]; *People v Hammonds*, 1 Misc3d 880, 887 [Sup Ct, Westchester County 2003] [“[T]he Court is not willing to usurp law enforcement’s discretion in the procedure they choose so long as the procedure has been held to be constitutional.”].) Whatever leeway Respondents have in choosing whether and how to enforce the PRI Law, their choices cannot violate the Green Amendment.

As the case law develops around New York’s Green Amendment, courts should not succumb to the “extraordinarily strong undertow” of federal precedent and should instead use the intent of the people of New York as a touchstone for interpretation. (See Jeffrey Omar Usman, *Good Enough for Government Work: The Interpretation of Positive Constitutional Rights in State Constitutions*, 73 Alb L Rev 1459, 1493 [2010]; see also Williams at 39 [“[State constitutions] are not miniature versions of the federal Constitution, nor are they clones of it.”].) Unlike the Federal government of limited powers, State governments have plenary powers limited only by their own constitution and the Fourteenth Amendment of the Federal Constitution. “State constitutions, in addition to a variety of policy-based provisions, often contain positive or affirmative rights, or even mandates, while federal constitutional rights are negative in nature.” (*Id.* at 43.) In discussing the effect of positive constitutional rights like the Green Amendment on the otherwise plenary discretion of state legislators, Judge Usman explains:

“The existence of a positive constitutional right ‘should . . . be understood as constraining the legislature’s otherwise unfettered discretion to choose from among competing policy alternatives.’ Although the right is likely only defined in general terms, ‘it creates “an environment of constraint, of . . . ideals to be fulfilled” that cabins the legislature’s discretion to choose only those means that will actually carry out, or at least help carry out, the constitutional end.’ The legislature retains the ability to ‘choose the means to carry out a constitutional goal, but it cannot claim to meet its constitutional duty if the means chosen evade, undermine, or fail to carry out the prescribed end. The relevant question is thus consequential in focus—asking whether the legislature’s approach furthers or effectuates the constitutional right at issue.’”

(Usman at 1522, quoting Helen Hershkoff, *Welfare Devolution and State Constitutions*, 67 Fordham L Rev 1403, 1414, 1415 [1999]). This limitation applies with equal force Respondents’ prosecutorial discretion—they may choose the means of enforcing the PRI Law so long as the result does not violate environmental rights.

Despite the limited applicability of federal precedent in this situation, the relationship between constitutional mandates and government discretion is similar enough in the state and federal contexts to be illustrative. The U.S. Supreme Court has pinpointed the unworkability of executive discretion unbound by constitutional restraints. In *Yick Wo v Hopkins*, the Court declared that the application of an ordinance allowing the city of San Francisco to prosecute laundry operators who lacked authorization to do business within the city to be unconstitutional because the authorization process conferred unlimited discretion on the board of supervisors,

who withheld authorization in a discriminatory manner against Chinese nationals. (See 118 US 356, 373-374 [1886].) Although the law was facially constitutional, the discretion it provided resulted in unconstitutional discrimination, which the Court had the power to restrain. (*Id.*) Thus, American constitutional jurisprudence provides a firm foundation upon which courts may declare the exercise of discretion, even prosecutorial discretion, to be unconstitutional.

“Judicial decision-making regarding affirmative rights immerses courts more deeply within the affairs of the executive and legislative branches.” (Usman at 1495.) This is because “positive rights, like their negative rights counterparts, invite judicial interpretation.” (*Id.* at 1519.) Treating environmental rights as uniquely nonjusticiable, “as matters purely of politics despite their constitutionalization, is to effectively read these provisions out of state constitutions or at least to eliminate the role of a tripartite system of checks and balances with regard to these constitutional rights.” (*Id.* at 1520.)

Green Amendments can be considered both positive and negative rights in that they require the government to act affirmatively in some circumstances, and to refrain from acting in others. (*Compare Twp of Marple*, 294 A3d at 974 [holding that an agency is required by the constitution to “complete[] an appropriately thorough environmental review” of its proposed action prior to reaching a decision], and *Glahn*, 298 A3d at 462 n.11 [finding that the Department of Environmental

Protection's failure to respond to a water supply contamination complaint "impaired Petitioners' right to clean water" (dictum)], with *Cape-France Enter v Estate of Peed*, 29 P3d 1011, 1017 [Mont 2001] [refusing to mandate specific performance of a contract that would result in pollution because it "would involve the state itself in violating the public's . . . fundamental rights to a clean and healthful environment"].) Courts are institutionally capable of determining what government conduct or dereliction violates the Green Amendment, even when the government has wide discretion or must consider other factors. Accordingly, Petitioners' claims that Respondents' failure to act violated the constitution are justiciable and remediable where that failure results in an infringement upon environmental rights.

CONCLUSION

For the reasons set forth above, this Court should reverse the decision below granting Respondents' motion to dismiss.

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE

Pursuant to 22 NYCRR 1250.8(f), I hereby certify that the foregoing brief was prepared on a word processor, using 14-point Times New Roman proportionally-spaced typeface, double-spaced, with 12-point single-spaced footnotes. The total number of words in the brief, inclusive of point headings and footnotes and exclusives of signature blocks and pages including the table of contents, table of citations, and this certificate of compliance, is 6,999.

Dated: October 24, 2025

A handwritten signature in blue ink, appearing to read 'Kacy C. Manahan', with a long horizontal flourish extending to the right.

Kacy C. Manahan, Esq