



California Green Amendment Frequently Asked Questions & Their Answers

What is a Green Amendment?

A Green Amendment is a self-executing provision placed in the Declaration of Rights section of a constitution that recognizes and protects the inalienable rights of all people to a clean and healthy environment. Green Amendments ensure environmental rights are given highest constitutional recognition and protection, on par with other fundamental rights such as speech, property and religious freedoms. If infringed upon as the result of government action or inaction, Green Amendment environmental rights are enforceable by the people.

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 the constitutional obligations of government – government officials cannot change or violate the constitution, they must honor and implement it. Passage of a California 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 of environmental pollution and degradation after-the-fact. A constitutional obligation to protect environmental rights refocuses government action on prevention of environmental harm or inequities.

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 (e.g. through 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.

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 community in order to enhance/protect the rights of another community – when this happens there is a serious question of constitutional concern.

To learn more: www.CAGreenAmendment.org

If a Violation of Environmental Rights Is Found What Will Be The Remedy?

Violations of the California Green Amendment will be addressed through equitable remedies/relief, meaning the government will be required to undertake action, or refrain from action, in order to remove the constitutional violation and restore the environmental rights that have been infringed upon. For example, provisions of a law declared to be unconstitutional cannot go into force and effect; a permit issued that will cause an unconstitutional violation is declared invalid/void; an existing law that requires clean-up of a toxic site by responsible parties must be enforced.

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

The California Green Amendment will provide overarching 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 thereby strengthening environmental justice; and ensures consideration of science, facts and cumulative impacts as part of the decisionmaking process.

The California Green Amendment will ensure that all levels of government and all government officials -- including at the local and the state level, including elected officials as well as regulatory agencies -- will have the obligation and opportunity to address environmental rights protections throughout the decisionmaking process, giving greater opportunity for successful environmental protection.

By giving environmental rights the same Article 1 standing as other fundamental rights, including property rights, it means government can no longer ignore essential environmental protections under the guise of protecting property rights for another individual, entity or community. Instead, environmental rights will receive the same highest constitutional standing and be entitled to the same highest constitutional protection as property rights.

When necessary, the California 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, the California Green Amendment can help address community harms where there is a gap in existing law.

How can legislators be responsible for protecting the right to clean water and air or a healthy environment when often these are not entirely within the control of any one state?

Rights enumerated in the Declaration of Rights are inalienable rights that the people reserve unto themselves to be protected from government infringement. Just as with other rights in the Declaration 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, 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 in order to address/prevent infringement in or from other jurisdictions. With the addition of a California Green Amendment to the constitutional Declaration of Rights, all government officials and agencies in California will be constitutionally obligated to take what action it can to respect and protect the environmental rights of the people within its jurisdiction, and to ensure it takes no action that will infringe upon the rights of all Californians to clean water and air, and a healthy environment.

The language in the proposed amendment is appropriately broad.

While broad, the language in the proposed California Green Amendment is not vague – its Article 1 placement and terms provide the guidance needed for government action and judicial interpretation in the environmental rights context. Broad language is characteristic of protected Article I rights. The terms ‘clean water’, ‘clean air’, ‘healthy environment’ are no less clear than the language in other California Declaration of Rights provisions, e.g., the right to “freely speak”, people are to be free from “unreasonable searches and seizures”, the right to be free from “excessive fines” or “cruel or unusual punishment”; the right to “due process of law” and a “speedy” public trial; these terms are all open to interpretation.

As with other language in the Declaration of Rights, there is a well exercised and understood process for defining key terms as these:

- ⇒ definition will begin with the legislative and executive arms of government through passage of legislation, regulations, policies, and decision-making that respects and protects the rights.
- ⇒ It is then incumbent on the people and the courts to challenge and/or support such decisions through the judicial system, which will provide further refinement, guidance and understanding as to how these terms are to be applied and fulfilled.

California’s government officials, courts and justices are well-equipped to define, interpret and apply the constitutional environmental rights language included in the California Green Amendment using standard principles of constitutional law and interpretation.

What states have Green Amendments currently?

Pennsylvania, Montana, and New York have constitutional language that fulfill the definition of a Green Amendment. Cases that have interpreted and applied existing Green Amendments can be found at the resources tab of the www.ForTheGenerations.org website.

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 Env'tl. Info. Ctr. v. Department of Env'tl. Quality, 1999 MT 248 (1999).)

How does Article I protection of environmental rights make a difference?

Article I placement will ensure that government prioritize environmental protection and work to avoid environmental pollution and degradation as part of the decision-making process, when there is the best opportunity for preventing harm including (but not limited to) when crafting and implementing legislation and regulations, when issuing permits, approving development, and considering how to address ongoing environmental concerns.

Article I placement will help ensure that in those instances when government does knowingly infringe on environmental rights there is a compelling state interest and there has been a conscious effort to minimize the impacts on the right, i.e., minimize environmental harm.

Article 1 placement will ensure the right belongs to all people and must be protected equitably by all government officials at every level of government regardless of race, ethnicity and socioeconomics, and may not consistently/repeatedly sacrifice the rights of one person or community for the benefit of others, without raising constitutional concerns.

Placement in Article I ensures environmental rights are protected on par with other fundamental rights (e.g., speech, due process, property rights) and ensures fair balancing of rights when needed. For example, if both property and environmental rights might be affected by government action then both must be considered, balanced and protected by the final outcome.

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

Green Amendments have been used by residents, township officials, administrative agencies, elected officials and organizations to: ensure state government agencies must consider the climate changing impacts of proposed government action; protect state government from enforcing well-testing that could contaminate an entire town's drinking water supply with cancer causing toxins; prevent permitting for dangerous industrial gold mining operations that would decimate critical natural resources and contaminate highly prized river systems recreationally and economically important, including resources important to Yellowstone National Park; ensure agency action to secure responsible industries cleanup a highly contaminated site with a spreading toxic pollution plume; prevent legislative overreach that usurped town zoning authority, infringed on residential homeowner expectations and rights, and put in place automatic waivers of environmental standards in the context of fracking operations; to support attorney general environmental enforcement actions; to support town council decisionmaking.