



# Green Amendment Victories How Green Amendments Are Recognizing & Protecting Environmental Rights



GREEN AMENDMENTS  
FOR THE GENERATIONS  
Pure Water. Clean Air. Healthy Environment.

Pennsylvania, Montana, New York, are the only three states in the U.S. that currently promise, protect and respect constitutional environmental rights protected on par with other fundamental human, civil and political rights we hold as inviolate, inherent, inalienable and inalienable rights protected from government infringement and transgression. In this series we share the varied ways that constitutional recognition is providing meaningful and transformative protection in the states where they exist, thereby making the case for constitutional Green Amendments in states across our nation and ultimately at the federal level.

## **Preservation of FDR Park, et. al. v. City of Philadelphia, et. al. Commonwealth Court of Pennsylvania, Decided August 13, 2025**

FDR Park is a 348 acre public park created in 1894 that is located along the Delaware River in Philadelphia, PA. In 1925, the City of Philadelphia (the City) passed an ordinance that dedicated FDR park as “public parkland.” Additional parcels have been added to expand the park over the years. Today, the park includes trails, ponds, recreational areas, and athletic fields; with its varied wetlands and waterways providing habitat for birds and wildlife. The section of the park known as the Meadows Area was acquired by the City for use as a public golf course and sports fields.

The City has undertaken a multi-year renovation of the park consisting of an “Urban Edge, which will include athletic fields connected by trails, and the Ecological Core, which will consist of lakes, wetlands, and forests.”

The challengers in this case are neighboring residents who oppose the City’s plan to “dig up the Meadows Area, plow over it, and install 40 acres of artificial turf for 16 athletic fields, basketball courts, and two concrete parking lots.” The Neighbors challenged the project in Orphans’ Court “alleg[ing] that for nearly 90 years FDR Park has been used as a public parkland with an ecosystem of meadows,

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wetlands, and forests that was designed by the Olmstead landscape architecture firm[, and b]y replacing the natural Meadows Area with artificial turf for athletic fields and concrete for parking lots, the City's plan will deviate from FDR Park's dedicated purpose", that of 'public parkland'. The Neighbors assert that "the plan will destroy the wetlands" and that the parkland's purpose will be illegally changed by destroying the natural environment and replacing it with artificial turf, as well as removing the publicly accessible sports fields and replacing them with the proposed athletic fields that will be gated and used for sports tournaments. According to the Neighbors:

- The City violated the Donated Property Act and the Inalienable Property Act by failing to obtain approval from the Orphans Court for the City's proposed alterations to the site;
- The City failed to obtain City Council approval for the City's proposed alterations to the site;
- The City's proposed alterations violate Article I, Section 27—also known as the Pennsylvania Green Amendment—because the project would result in degradation to public historic and natural resources; and
- The City's proposed alterations violate the Public Trust Doctrine because the "land has been dedicated and accepted for public use," and "so long as the land continues to be used, in good faith, for the purpose for which it was originally dedicated," the City is obligated to hold the property for the community.

The Neighbors seek to stop the project partly through a preliminary injunction that will stop the City from cutting trees, plowing over the area, and installing the artificial turf fields and other infrastructure elements.

The City requested dismissal of the entire complaint for several reasons, including that the Orphans' Court lacked jurisdiction over claims brought pursuant to the Green Amendment, and that the project would not result in changes to the park or ownership of the property that would violate the Donated Property Act and the Inalienable Property Act.

### **With regard to jurisdiction over the Green Amendment Claims:**

The Orphans' Court dismissed the case in its entirety determining it lacked the necessary jurisdiction over the subject matter. The court found that the Neighbors failed to state a claim under the Donated Property Act because the Neighbors conceded that the City was not planning to sell, lease, or otherwise alienate the park. Similarly, the court found that the Neighbors failed to state a claim under the Inalienable Property Act because the Neighbors conceded that the land would remain a public park. The court found that "neither statute nor the Pennsylvania Constitution vested the Orphans' Court with jurisdiction to hear claims arising under the [Pennsylvania Green Amendment] or the Public Trust Doctrine;" by referencing state code which listed out various areas of law the court had jurisdiction to review, and because the Pennsylvania Green Amendment was not among those listed, the Orphans Court determined it lacked jurisdiction over Pennsylvania Green Amendment claims. These three determinations in tandem were the basis of the Orphans' Court conclusion that it lacked jurisdiction over the Neighbors claims.

The Neighbors appealed.

On appeal, the Commonwealth Court noted that the Judicial Code and Supreme Court precedent does vest the Orphans' Court with unlimited original jurisdiction, including over Pennsylvania Green Amendment claims.

In its discussion of the Pennsylvania Green Amendment, the court reminded that the amendment establishes "a public trust, pursuant to which the natural resources are the corpus of the trust, the Commonwealth[] is the trustee, and the people are the named beneficiaries." The court reminded further that these "trustee obligations are not vested exclusively in any single branch of Pennsylvania's government, and instead all agencies and entities of the Commonwealth government, both statewide and local, have a fiduciary duty to act toward the corpus with prudence, loyalty, and impartiality." (Citing: Pennsylvania Environmental Defense Foundation v. Commonwealth, 161 A.3d 911 (Pa. 2017))

**With regards to whether there has been a change of use that prohibits the proposed project:**

The Commonwealth Court discussed the applicability of the Donated Property Act and explained that "the Donated Property Act applies to all real estate held in trust by the municipality for a public purpose . . . and imposes a duty on municipalities to use the property 'for the purpose . . . for which [it was] originally dedicated or donated[.]'" If the municipal owner wants to deviate from the purpose for which the property was donated or dedicated, and change its use, the municipality must secure Orphan Court review and approval. The Neighbors asserted that the many changes the City is proposing—destroying many of the natural areas in the park and closing off newly developed sections from public use in favor of private use for sporting events—will change the use of the Park and deviate it from the specific purpose for which the land was dedicated: "public parkland."

The Commonwealth Court also explained that the Inalienable Property Act prohibits the sale, mortgage, lease or exchange of property, without court approval, if its title is inalienable. The Neighbors asserted that the changes to the property are so significant that they amount to a constructive sale or transfer of the land therefore requiring Orphans' Court approval.

Ultimately, the Commonwealth Court found that the Orphans' Court never ruled on the Neighbors' claims under the Inalienable Property Act or the Donated Property Act because the Orphans' Court determined that the Neighbors' acquiescence at oral argument that the property would remain a park and was not being sold or leased meant that the Neighbors did not state a claim under either statute. In doing so, the Commonwealth Court determined that the Orphans' Court did not rule on the Neighbors' claims, and therefore the Commonwealth Court could not provide appellate review without an Orphans' Court determination. The Commonwealth Court remanded for further proceedings before the Orphans' Court to determine whether the City's plans for the park would violate the Donated Property Act, the Inalienable Property Act, and/or the Pennsylvania Green Amendment.

But very notably, the Commonwealth Court made clear the applicability of the Pennsylvania Green Amendment in guiding action by all branches of government, including the courts, with regard to the further proceedings before the Orphans' Court:

“In conducting this review, the Orphans’ Court should be mindful of our Supreme Court’s instruction that the Environmental Rights Amendment affects the work of all three branches of state government. Stated otherwise, the Donated Property Act must be read through the lens of the Environmental Rights Amendment. Further, the Donated Property Act established the procedures for vindicating public trust principles, including those arising from the Environmental Rights Amendment.” (Citations omitted)

With this finding, the Commonwealth Court has made clear that courts, just like local and state government officials, must consider the constitutional rights and obligations articulated in the state’s Green Amendment, and ensure that their actions are in full compliance with the rights and duties it recognizes and imposes.