



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, indefeasible 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.

Friends of Fort Greene Park v. NYC Parks & Recreation Dept **Supreme Court of New York – New York County** **Decided July 1, 2025**

Fort Greene Park is located in Brooklyn, New York. Within the park are historic remnants from the Revolutionary War and the War of 1812. The park itself is the result of a star-shaped fortification built in 1814. It was the first piece of land designated for use as a park in the City of Brooklyn. In 1867, the park was redesigned to include several new elements, including a crypt containing human remains from the Revolutionary War, among them were the remains of slaves fulfilling the military obligation of their slaveholder. A 149 foot column stands as the monument designating the site of the Prison Ship Martyrs' Memorial where the crypt and remains are housed.

Additional modifications to the park over the years included two large earthen granite block mounds (called the "Bye Mounds") along with a circular garden and a perimeter of Norway Maples in a related area of the park. Basketball and tennis courts have also been added to the park.

In 1978 the park and areas around it were designated the Fort Greene Historic District.

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As described by the Court: “Today, the Park is a cherished community resource, hosting events, and allowing Brooklynites (and all who visit) to connect to nature, honor the Prison Ship Martyrs, to gather, reflect, stroll or play.”

In 2019 the Parks Department sought to undertake a 13 acre re-design as part of an initiative to make parks more connected with, and accessible to, neighboring communities. Ten of those acres were part of Fort Greene Park. The project included removing 78 mature trees and removal of some of the grass and stone mounds called the Bye Mounds. As required by the State Environmental Quality Review Act (SEQRA), implemented through the City Environmental Quality Review rules, the Parks Department conducted a full environmental assessment of the proposed project. A public process, including public meetings, invited input in to the proposal. As the result of these considerations, modifications were made, including to address accessibility and soil erosion issues.

The Parks Department prepared an Environmental Assessment Form as is required by SEQRA for projects identified as ‘type 1’, the status ascribed to this project. The Environmental Assessment required the Parks Department to consider a variety of impacts including whether there would be any “substantial adverse change in existing air quality, ground or surface water quality or quantity, ... the impairment of the character or quality of important historical ... or aesthetic resources or of existing community or neighborhood character ... changes in two or more elements of the environment, no one of which has a significant impact on the environment, but when considered together result in a substantial adverse impact on the environment.” If after this review the Parks Department had determined there may be a “significant effect on the environment” then it must issue a positive declaration and undertake a more fulsome Environmental Impact Statement. In this case the Parks Department issued a negative declaration and so was not obligated to undertake development of a full Environmental Impact Statement.

Friends of Fort Greene Park challenged the environmental review process, asserting the Parks Department had failed to take the requisite “hard look” at all of the potentially significant environmental impacts that might result from what was being proposed. Specifically, they argued the required ‘hard look’ was not undertaken in 3 areas: (1) open space, (2) historic and cultural resources, and (3) natural resources. Friends of Fort Greene Park argued that an Environmental Impact Statement was in fact required.

Review of the State Law Claims

SEQRA determinations are challenged through Article 78 proceedings in which the court reviews whether the agency’s determination was arbitrary, capricious, an abuse of discretion, or affected by an error of law. In undertaking their environmental reviews pursuant to the state law, “agencies have considerable latitude evaluating environmental effects and choosing between alternative measures. While judicial review must be meaningful, the courts may not substitute their judgment for that of the agency for it is not their role to ‘weigh the desirability of any action or [to] choose among alternatives.’”

The environmental review undertaken by the Parks Department included a wide array of issues including community affects, air quality, water quality, stormwater issues, issues related to climate change, noise impacts, implications for plants and wildlife, consideration of hazardous materials, and whether aspects of the project would have adverse implications for public health. The review included an open space assessment as well as consideration of implications for historical and cultural features.

The proposed tree removal that was of concern to the Friends of Fort Greene Park was part of the Parks Department's assessment. The Parks Department's efforts included a tree survey and inventory, and an evaluation of natural resources associated with the park including bird migration, wildlife ranges, and native insects and pollinators. According to record of the case, of the 424 trees in the study area, 30 would be removed because of their health, and another 48 would be removed because they conflicted with the project design. In addition to the removal, the Parks Department had plans to plant 500 new trees with 200 of them planted as a part of the proposed project and the other 300 planted within the boundaries of Fort Greene Park. Among the trees being removed were invasive Norway Maple trees. Detailed review demonstrated that the tree removals would not cause significant adverse environmental impacts.

The court determined that the Parks Department did undertake the requisite hard look and set forth a "reasoned elaboration for their determination" supporting the tree removal. The court discussed many of the aspects of the review and the conclusions reached by the Parks Department – for example that there would not be a reduction in open space, and that over the long term the project would increase passive and active recreation. According to the court, the quality of the review and reasoned elaboration provided by the Parks Department warranted judicial deference. According to the court, the Friends of Fort Greene Park (the petitioner) "has not tendered sufficient evidence contradicting the documentary evidence, which conclusively establishes that [the Parks Department] did not act arbitrarily or capriciously when it determined that the Project will not result in any significant adverse environmental impacts."

With regards to the Friends of Fort Greene Park challenge to determinations and justifications for the removal of the 78 trees and their replacement with 200 trees planted as part of the project, the court carefully reviewed the valuation tools, analysis, justifications and expert findings secured by the Parks Department and determined "it cannot be said that Parks determination is irrational or arbitrary and capricious." The court noted that while the challengers were stressing the impact of removing "mature" trees, "[i]t is not irrational to make a considered choice to remove some mature trees to ensure a more accessible Park and eventually far more benefits for future generations."

When it came to advancing appropriate review and decision-making with regards to historic resources, the court also supported the decision-making process and outcome of the Parks Department.

Review of the New York Green Amendment Constitutional Claims.

In addition to the multiple causes of action based on other legal foundations, Friends of Fort Greene Park also brought two causes of action based on the New York Green Amendment.

Friends of Fort Green Park asserted that the negative declaration issued by the Parks Department regarding the impacts of the project violated the rights of their members to ‘clean air, clean water and a healthful environment’ by “enabling, inter alia, the felling of 78 mature trees without accounting for their lost environmental benefits for generations, or even within the Park at all.” Friends of Fort Greene Park argued that the NY Green Amendment creates a fundamental and substantive right that must be protected and requires the Parks Department to consider their environmental rights as part of their deliberations.

By contrast, the Parks Department asserted that the amendment “does not create a new avenue for challenging an action that is already subject to the existing body of environmental laws, implementing regulations, and caselaw...” going on to say that only in “rare and extraordinary situations where, for example, there has been an egregious failure to implement or enforce existing law, it might be possible to vindicate environmental rights only through a direct application of” the Green Amendment. The Parks Department went on to assert that because the Parks Department thoroughly reviewed the project pursuant to SEQRA an independent challenge just based on the Green Amendment should be rejected.

Citing “well settled” law that constitutional provisions are “presumptively self-executing” and that therefore a “private right of action is presumptively available,” the court began by affirming that the NY Green Amendment is self-executing. The court went on to note that “the plain language of the Amendment [itself] is brief, unambiguous, and does not reference or rely on subsequent legislation.” The court also referenced and discussed the *Fresh Air for the Eastside, Inc. v. State* line of cases decided by the state Supreme Court and the Fourth Department Appellate Division, which also affirmed that the amendment was self-executing and could support a cause of action against government actors, but did not support a cause of action against private entities.¹

After much reflection and discussion of other cases, legal writings, legislative history, public discourse, and the timing of the amendment vis a vis environmental challenges advancing in the state at the time of the amendment’s consideration, the court confirmed that based on the plain language and other principles of constitutional interpretation the NY Green Amendment creates a substantive and fundamental right, is self-executing without further legislation, and that it can create a cause of action against government actors.

When reflecting on the appropriate standard of review, the court did not apply a strict scrutiny standard but instead developed and applied an alternative three-part test complimented by an

¹ The court did note that with regards to the self-executing nature of the amendment, the 4th Department did not explicitly make any findings.

intermediate standard of review. This approach and intermediate standard is yet to be reviewed by higher courts in New York state and is therefore still a matter of ongoing consideration.

The review developed and implemented by the court is as follows:

- ⇒ “First, did the government action comply with the applicable statute?
- ⇒ Second, did the government action violate a person's constitutional ‘right to clean air and water, and a healthful environment’?
- ⇒ Third, if there is a constitutional violation, can the government show that the plan is justified by an important interest that is substantially related and proportionate to action the government has taken.”

Utilizing this test, the court determined the plaintiff’s Green Amendment claims must fail for the following reasons:

- ⇒ First Part: Park complied with the applicable law for its review, SEQRA.
- ⇒ Second Part: Based upon the expert information provided, the removal of the 78 trees does not violate the right to clean air and a healthful environment. The court noted that Norway Maples are invasive and were to be replaced with native trees more suited to the NY environment, that the removed trees were being replaced by hundreds of other beneficial and healthy trees, that many of the trees being removed are damaged or unhealthy, that the removed trees would not result in the immediate release of carbon harmful for the climate but instead would decay over time as they were being replaced by the growth of the newly planted trees, and that while there may be a near term loss of environmental benefit from the tree removal that this loss would be replaced by significant benefits over the long term from the new trees planted.
- ⇒ Third Part: The court noted that even if there were determined to be a constitutional violation, that the project, including the tree removal, is “justified by an important government interest to upgrade, modernize, and make more accessible local parks,” and that the tree removal is substantially related and proportionate, and therefore is constitutionally justified.

Note: Green Amendments For The Generations believes that strict scrutiny review is the appropriate standard of review for the NY Green Amendment and is making that case in amicus briefs and other legal filings. If strict scrutiny were applied in this case, we agree that the removal of the 78 trees based on all the information provided and the context of the project would not result in a constitutional violation of the right to clean water and air and a healthful environment for the same reasons identified by the court using its 3 part test, and that even if it was determined to be a constitutional violation, because the project was in service to a compelling state interest (again as described by the court) and that the tree removal was related to that interest, pursuant to strict scrutiny review the project could be constitutionally justified.

The court concluded its decision with this powerful concluding paragraph:

“The Green Amendment is a great dream realized. It exists to challenge laws, activities, or proposed actions that pose significant threats to the environment. It serves as a backstop in the event federal laws and agencies fail to offer protections. And, it is apparent that it provides an independent cause of action that may be applicable to the government’s failures to protect New Yorkers from contaminated drinking water, polluted air, pollutants, extreme weather and climate change events.”

Note: in the final analysis, the NY Green Amendment stood in defense of the challenged government action.