



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



GREEN AMENDMENTS
FOR THE GENERATIONS
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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.

Held v. State of Montana

Montana State Supreme Court
Decided December 18, 2024
2024 MT 312

Sixteen Youth Plaintiffs filed suit against the Governor of Montana and several Montana state agencies (collectively, “State of Montana”). The Youth Plaintiffs challenged a state law provision within the Montana Environmental Policy Act (MEPA) that prohibited state environmental reviews pursuant to the act from: *“a review of actual or potential impacts beyond Montana’s borders. It may not include actual or potential impacts that are regional, national, or global in nature.”*

Prior to the addition of this limitation, environmental reviews considered greenhouse gas emissions that would result from proposed government action; after enactment, state environmental reviews no longer considered resulting greenhouse gas emissions. According to lower court trial evidence, the failure to consider the climate changing ramifications of state government action was helping to fuel the advancement of fossil fuel extraction, transportation and use in the state, resulting in greenhouse gas emissions and climate change impacts causing harm to the Youth Plaintiffs.

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The Youth Plaintiffs claimed that by prohibiting consideration of climate change in its environmental reviews, the State of Montana was violating the Youth Plaintiffs' constitutional rights to a clean and healthful environment protected by Article II, Section 3 of the state constitution, and complimentary provisions found in Article IX (*aka the Montana Green Amendment*). A state trial court judge held the challenged legislation to be unconstitutional because it did in fact violate the environmental rights of the Youth Plaintiffs. The State appealed this determination to the Supreme Court of Montana, which rendered a significant and precedential legal opinion reaffirming the findings of the lower court.

The court, reiterated the constitutional language recognizing and protecting environmental rights in the state, and noted that by virtue of both the history of the 1972 Montana Constitutional Convention, and prior precedent interpreting the *Montana Green Amendment* language, that the two provisions were to be read in concert with one another.

Article II, Section 3, of the Montana Constitution guarantees all persons certain inalienable rights, "includ[ing] the right to a clean and healthful environment."

"Article IX, Section 1, of the Montana Constitution further provides 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".

The court provided a clear recognition that climate change, caused by greenhouse gas emissions that are largely the result of fossil fuel extraction and consumption, is resulting in severe and significant harm worldwide, but also within Montana.

"The world is experiencing a fast rise in temperature that is unprecedented in the geologic record.... Montana is heating faster than the global average and the rate of warming is increasing. Overwhelming scientific evidence and consensus shows that this warming is the direct result of greenhouse gas (GHG) emissions that trap heat from the sun in the atmosphere, primarily from carbon dioxide (CO₂) released from human extraction and burning of fossil fuels such as coal, oil, and natural gas."

"These emissions result in extreme weather events that are increasing in frequency and severity, including droughts, heatwaves, forest fires, and flooding. These extreme weather events will only be exacerbated as the atmospheric concentration of GHGs continues to rise."

The court confirmed that the constitutional right to a clean and healthful environment is fundamental in Montana, and is subject to strict scrutiny review, meaning that challenged government action that may infringe on the constitutional right, can only be upheld if "the State establishes a compelling state interest which is narrowly tailored and is the least onerous path to achieve the State's objective."

The court reaffirmed prior case law that confirmed the environmental protections in the *Montana Green Amendment* language is "both anticipatory and preventative" and that "the Constitution's 'farsighted

environmental protections can be invoked' prior to harmful environmental effects" taking place. The court also made clear that the constitutional protections were more broadly applicable to incidents of environmental degradation, not just "environmental degradation that could be conclusively linked to ill health or physical endangerment."

The court confirmed that the constitutional right to a clean and healthful environment "includes a stable climate system." According to the court, the failure of the constitutional language to specifically mention the climate or the right to a stable climate was not determinative in its inclusion among the environmental rights to be protected. As the court eloquently stated: "A Constitution is not a straight-jacket, but a living thing designed to meet the needs of a progressive society and capable of being expanded to embrace more extensive relations." "The right to a clean and healthful environment is "forward-looking and preventative. It does not require the Framers to have contemplated every environmental harm that is protected" by the provision. In sum, the court determined that while a stable climate might not have been contemplated at the time the amendment was crafted, it is clearly consistent with the object and principles to be protected and achieved by the language, and is included within its protections.

The Youth Plaintiffs had to meet legal standing requirements in order to bring their constitutional environmental rights claim. The court discussed that it is not enough to assert that a constitutional entitlement is being violated; in order to pursue a claim, plaintiffs must demonstrate a legal violation that has or will cause injury to the plaintiff, or the exercise of a civil or constitutional right, and that the injury claimed can be remedied and/or prevented by the court. The court was careful to distinguish that while "[a]lleging the unconstitutionality of a statute generally or in the abstract is insufficient to confer standing," demonstrating that "a statute violates a plaintiff's constitutional right is sufficient to show an injury, and seeking to vindicate those constitutional rights confers standing."

The court recognized that the Youth Plaintiffs did demonstrate they were injured by the State's failure to consider the climate changing ramifications of their actions, and the fact that others in the state were similarly injured could not be used as an argument to undermine standing in this case. Quoting past case precedent, the court recognized that "to deny standing to persons who are in fact injured simply because many others are also injured, would mean that the most injurious and widespread Government actions could be questioned by nobody."

The court went to great lengths to affirm that the case was focused on the actions of Montana State government officials, whether those actions could or would result in a constitutional violation of the environmental rights of the Youth Plaintiffs, and whether a decision of the court could stop or prevent the unconstitutional violation taking place within the State. It was irrelevant that a decision from this court could not or would not solve the overarching issue of climate change or the actions of others contributing to the growing climate crisis. Quoting from some of the briefing filed in the case, the court noted: "Plaintiffs [are] not suing to stop climate change. They [are] suing to challenge the constitutionality of [a] specific provision of MEPA."

The court goes on to explain:

"To require an act to be the sole cause of an injury before it could be redressed, . . . would upend decades of jurisprudence from this Court and the United States Supreme Court that hold an injury caused in part by a challenged action is redressable even if it does not redress the injury in full Declaring the MEPA Limitation unconstitutional will redress the constitutional injury caused by that statute, regardless of whether or not other statutes

also cause constitutional harms. To hold otherwise would close the doors of the courts to plaintiffs trying to vindicate personal constitutional rights unless they could identify every other instance where their rights might be infringed and sought to litigate those at the same time.”

“Plaintiffs may enforce their constitutional right to a clean and healthful environment against the State, which owes them that affirmative duty, without requiring everyone else to stop . . . adding fuel to the fire.”

“It may be true that the MEPA Limitation is only a small contributor to climate change generally, and that declaring it unconstitutional will do little to reverse climate change. But our focus here, as with Plaintiffs’ injuries and causation, is not on redressing climate change, but on redressing their constitutional injuries: whether the MEPA Limitation unconstitutionally infringes on Plaintiffs’ right to a clean and healthful environment.”

The court went to great lengths to make clear: “global GHG emissions do not insulate the State from its affirmative constitutional duties with regards to projects that it permits.”

To wrap up this line of discussion in the case, the court makes clear:

“[T]he question is whether legal relief can effectively alleviate, remedy, or prevent Plaintiffs’ constitutional injury, not on whether declaring a law unconstitutional will effectively stop or reverse climate change.”

“Plaintiffs allege that the MEPA Limitation causes a violation of their constitutional rights, which is their injury. Declaring that law unconstitutional and enjoining the State from acting in accordance with it will effectively alleviate that constitutional injury....”

In the final analysis the court determined the MEPA limitation to be unconstitutional because it implicated the right to a clean and healthful environment, and because it was not narrowly tailored to the state’s alleged “compelling interest” in “balancing private property rights with the right to live in a clean and healthful environment.” Notably, because the state failed the “narrowly tailored” requirement, the court did not consider whether the balancing of private property rights with environmental rights was a “compelling state interest” for purposes of strict scrutiny constitutional review.

The court concluded by ruling:

“Plaintiffs have standing to challenge the injury to their constitutional right to a clean and healthful environment. Montanans’ right to a clean and healthful environment was violated by the MEPA Limitation, which precluded an analysis of GHG emissions in environmental assessments and environmental impact statements during MEPA review. The MEPA Limitation [] is unconstitutional and the State is enjoined from acting in accordance with it.”

This case further affirms the importance of constitutional environmental rights language that meet the definition of a Green Amendment including ensuring the right is recognized as a fundamental right, in the

bill of rights section of the constitution, that it is self-executing, enforceable by the people, clear in the rights protected, and subject to strict scrutiny review.