



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.

***East Side Parkways Coalition, et al. v. N.Y.S. Dep't of Transp., et al.***

*State of New York Supreme Court, County of Erie*

*Decided February 7, 2025*

*228 N.Y.S.3d 891*

This decision is the second issued by this court addressing the State of New York's Kensington Expressway Project. The first decision addressed the Petitioners' request for a preliminary injunction, which the court denied for Petitioners' claims under the New York State's Climate Act (CLCPA) and the NY Green Amendment, but granted for the Petitioners' New York State Environmental Quality Review Act (SEQR) claim. This current decision addresses the Respondents' motions to dismiss those same claims.

Respondents motion to dismiss Petitioners' Climate Act and Green Amendment claims alleged that Petitioners failed to demonstrate violations of the Climate Act and the NY Green Amendment because Petitioners made no fact-specific allegations and rely on general conclusions that the Project will hasten climate change. In response, Petitioners argued that more than seventy-six thousand metric tons of carbon dioxide will be released from the Project.

For Petitioners' claims to survive the motion to dismiss, Petitioners "must allege something more than generalized concerns." The court found that the Petitioners did so in its allegations that the

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Project will affect the disadvantaged community around the construction site. Although “proximity alone is insufficient to raise an environmental challenge,” the disadvantaged community members’ proximity to the Project means that they will be affected differently than other members of the public. In addition to the proximity of the disadvantaged community, the State is mandated to consider the impact of the Project on the environment and disadvantaged communities, and the record demonstrated that greenhouse gasses and other construction emissions will increase as a result of the Project. Those three allegations sufficed to establish that there are questions of fact regarding whether Respondents adequately considered the environmental impacts of the Project, so the court denied the motion to dismiss.

Regarding the Respondents’ motion to dismiss Petitioners’ EIS claim, the court not only denied the Respondents’ motion to dismiss but also found that the Respondents’ determination that the Project would not have any significant environmental impacts was improper, and “[i]n light of the undisputed potential adverse health effects that will occur from the greenhouse emissions, traffic, blasting, and other related impacts associated with heavy industrial construction, the Respondents erred by neglecting to perform an EIS.” The court stated that “[t]he residents of these affected areas deserve better.” Accordingly, the court permanently enjoined the Respondents from proceeding with the project until it has complied with SEQRA.

This case provides some guidance on the specificity necessary to demonstrate a cognizable cause of action under the Green Amendment. The fact that the Project would cause several tens of thousands in metric tons of carbon dioxide was not enough alone to rise to the level of specificity necessary to establish a legal claim. As the court noted in its prior decision, “[P]etitioners’ allegations lack specificity with respect to how the construction and maintenance of the Expressway violates the Green Amendment; how the increase in particulate matter will significantly contribute to unclean air; and any ‘fact-specific connection between that alleged harm and an actual plaintiff, so as to establish the essential element of injury.’” By identifying that the disadvantaged community will be impacted differently due to its proximity to the construction and will be harmed due to the undisputed increase in greenhouse gasses and other construction emissions, the NY Green Amendment and Climate Act claims survived. However, Petitioners will still have to prove this claim before the court.