



**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.

Western N.Y. Youth Climate Council, et al. v. N.Y.S. Dep’t of Transp., et al.
State of New York Supreme Court, Erie County
Decided November 15, 2024
224 N.Y.S.3d 790

In the late 1860s and early 1870s, the Humboldt Parkway sat where the Kensington Expressway sits today. The Humboldt Parkway was a tree-lined boulevard that “served as the focal for the adjacent neighborhoods,” connecting the east and west sides of Buffalo. Nearly one-hundred years later, the Humboldt Parkway was removed and replaced with the Kensington Expressway and reduced the connectivity of the Buffalo neighborhoods. In 2022, the State began pursuing a billion-dollar redevelopment of the Kensington Expressway to re-establish connectivity of eastern and western Buffalo.

In addition to several other claims, Plaintiffs challenged the proposed redevelopment of the Kensington Expressway as a failure of the State to ensure the Plaintiffs’ constitutional rights to clean air and a healthy environment. Plaintiffs asserted the “continu[ed] maintenance and operation of the Kensington Expressway” was causing continued pollution through emissions, fumes, and other unhealthy effects, in violation of their constitutional rights to “clean air . . . and a healthful environment” as guaranteed by Article 1, Section 19 of the New York state constitution. Plaintiffs

insisted that the State's maintenance and operation of the Expressway directly injured the Plaintiffs. Plaintiffs requested that the court issue a preliminary injunction.

The New York Green Amendment was ratified in November 2021 and took effect thereafter on January 1, 2022; the Kensington Expressway opened almost sixty years before. Therefore, the court assessed whether the Green Amendment should be given retroactive effect. Under New York State law, statutory enactments are given retroactive effect only (1) where "the Legislature's preference for retroactivity is explicitly stated or clearly indicated," or (2) for remedial legislation "in order to effectuate its beneficial purpose." The court found that the NY Green Amendment was not retroactive because there was no indication that the Legislature intended the Green Amendment to have retroactive effect and because the Green Amendment is not remedial legislation because the Green Amendment was not "designed to correct imperfections in the prior law, or [] provide a remedy for a wrong where none previously existed."

In addition to the issue of retroactive application, the court highlighted two additional flaws to the Petitioners' Green Amendment argument. First, that the State has a "nondelegable duty to maintain its roads and highways in a reasonably safe condition, and that liability will flow for injuries from a breach of the duty[.]" The court found it unreasonable to expect the State to abandon "its responsibility for the Expressway's maintenance and let it go into . . . disrepair[]" or to dismantle existing highways without "the same impact on traffic, noise, and air the Petitioners seek to avoid." Second, that the Petitioners' allegations "lack[ed] specificity with respect [to] how the construction and maintenance of the Expressway violates the Green Amendment" because Petitioners did not demonstrate "how the increase in particulate matter will significantly contribute to unclear air[, or provide] any 'fact-specific' connection between that alleged [environmental] harm and an actual plaintiff."

The court also addressed the Plaintiffs' claim that the Defendants violated State Environmental Quality Review Act for failing to prepare an environmental impact statement (EIS) for the construction of the Expressway. An EIS is required under this state law when "a project results in at least one significant adverse impact[.]" The court did acknowledge that "[t]his project will undoubtedly cause traffic disruptions, emit greenhouse gasses and other pollutants, and otherwise impair local neighborhoods," and granted the preliminary injunction for the State's failure to prepare an EIS.

This court decision set the precedent that the Green Amendment does not apply retroactively to projects already undertaken by the State. For that reason, the court did not grant a preliminary injunction for violations of the Green Amendment because the Plaintiffs complained of the *original* construction of the Kensington Expressway nearly sixty years ago. However, the issue of retroactivity does not apply to the *proposed* project because the Green Amendment was passed and took legal effect prior to the commencement of the State's environmental review.