



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.

**PADEP v PA Legislative Reference Bureau
Supreme Court of Pennsylvania, Middle District
Decided July 18, 2024**

In 2019, the Pennsylvania Department of Environmental Protection (PADEP) had developed a rulemaking package to effectuate Pennsylvania's membership in the Regional Greenhouse Gas Initiative (RGGI), a cooperative effort among 11 eastern states to reduce carbon dioxide emissions. The Commonwealth Court, responding to a legal challenge, put in place a preliminary injunction on implementation of the regulations, which later was made permanent. Three environmental organizations – Citizens For Pennsylvania's Future, Clean Air Council and PA Sierra Club -- sought to intervene in the case and were denied intervention. The Pennsylvania Supreme Court, responding to an appeal by the three organizations of the denial of their intervention and of the preliminary injunction against the regulations, reaffirmed the importance and strength of Green Amendment protections for addressing the climate crisis.

The Pennsylvania Supreme Court reversed the denial of intervention. The challenge to the injunction was deemed moot.

RGGI states have jointly set a cap on CO2 emissions which will decline over time, thereby reducing CO2 emissions from impacted powerplants. Pursuant to RGGI, fossil-fuel-fired electric powerplants with a capacity of 25 megawatts or greater, and that operate within the 11 RGGI states, must buy “allowances” in order to emit CO2. Proceeds from purchase of the allowance, which are bought at a quarterly auction, are given to the RGGI states for use.

The RGGI regulations were developed by the state PADEP, but prior to final issuance, were disapproved by the Pennsylvania legislature by virtue of a concurrent resolution that failed to meet applicable approval timelines and was later vetoed by then-Governor Wolf. The PADEP filed a legal action in Commonwealth Court seeking a determination that the regulations be deemed approved and sought a court mandate they be formally published and thereby effectuated, in accordance with PA law. Individual members of the state legislature submitted a motion to intervene and challenge the validity of the regulations; the motion was granted by the court in March, 2022.

At a hearing regarding challenge to the regulations, the 3 environmental nonprofits, as well as industry representatives, were given leave to present arguments to the Commonwealth Court even though their intervention requests had not yet been ruled upon. In June, 2022 the nonprofits motion to intervene was denied, with the court determining they had “failed to prove a legally enforceable interest or injury” for themselves or their members, and that their interests were being adequately represented by the PADEP, despite that the agency had not raised the kinds of constitutional environmental rights arguments the environmental organizations had sought to advance.

July 2022 the regulations were codified and then immediately became the subject of a preliminary injunction, later made permanent, preventing their implementation.

The Pennsylvania Supreme Court, in *PADEP v PA Legislative Reference Bureau* (decided July 18, 2024) determined that a grant of intervention to the environmental organizations was improperly denied. The court said the goal of protecting environmental well-being is “significant” and shared by the public at large. The Pennsylvania Supreme Court ruled that the witness and expert testimony provided by the environmental organizations had in fact demonstrated a substantial interest in the outcome of the RGGI litigation and demonstrated the kind and quality of injury necessary to support legal standing in the case, such as:

- testimony regarding how members of the environmental organizations were being harmed by CO2 emissions, including:
 - health and safety harms experienced due to the increase in heat, rain and flooding caused by increasing climate change,
 - worry about the impacts on the health and safety of individual testifiers’, their family members, children and grandchildren such as asthma, breathing issues, headaches, dizziness and bloody noses related to air emissions from nearby fossil-fueled powerplants;
 - the premature birth of one testifier’s child who suffers from weak lungs potentially due to poor air quality in her area; and

- eco-anxiety as well as other stresses caused by climate change, poor air quality from powerplants and due to CO2 emissions.
- Expert testimony regarding the relationship between CO2 and climate change, and the health consequences caused by air emissions from fossil-fuel electric powerplants, that would be reduced if the RGGI regulations were implemented.

The Court also determined that there was a direct connection between implementation of the RGGI regulations and improvements to the environment that would benefit the impacted individuals that are a part of this case. Because the members of the organizations who testified have standing, the court determined that the environmental organizations therefore have organizational standing to pursue the case.

The Pennsylvania Supreme Court also made clear, that because the PADEP at no point raised the Pennsylvania Environmental Rights Amendment – *aka the PA Green Amendment* – in its legal arguments, and the amendment is a key element of the case the environmental organizations seek to advance, the state cannot be said to adequately represent the interests of the environmental organizations or their members. The court noted that the constitutional environmental rights argument in defense of the RGGI regulations presents a “salient” and “nonfrivolous” argument that is “central” to the potential outcome of the case; and yet it is an argument never raised by PADEP.

For these reasons, and others, the court determined the environmental plaintiffs were entitled to intervene in the case and make their legal arguments, particularly related to the Pennsylvania Environmental Rights Amendment, *aka the Pennsylvania Green Amendment*.

Because the preliminary injunction challenged by the plaintiffs was replaced by a permanent injunction, the court deemed that aspect of the case moot.

***The following is a statement from
Maya K. van Rossum, Founder of Green Amendments For The Generations
on the impacts and implications of this ruling***

By ruling that Pennsylvanians harmed by climate changing air pollution, and the heat, flooding and other weather related impacts of the climate crisis, have a right to intervene in this case and put forth arguments asserting their constitutional environmental rights and the Commonwealth’s constitutional obligations to meaningfully addresses climate change, the Pennsylvania Supreme Court has once again demonstrated the unparalleled value of have a constitutional environmental right that meets the definition of a “Green Amendment” for people impacted by pollution and the climate crisis. Article 1 Section 27 of the Pennsylvania Constitution, aka Pennsylvania’s Green Amendment, provided an essential foundation to today’s Pennsylvania Supreme Court decision supporting the right of individuals and environmental organizations to go to court in order to demand and defend the right and obligation of state government officials to address the climate crisis.

In the absence of the Pennsylvania Green Amendment, the environmental organizations and their members may not have had the legal foundation deemed necessary to intervene in this ongoing legal

action and demand reinstatement and implementation of the state's RGGI regulations in order to address Pennsylvania's ongoing and growing CO2 emissions from fossil-fueled electric power plants.

A [“Green Amendment”](#) is a constitutional provision found in the declaration of rights section of a state constitution that gives environmental rights the highest constitutional protection in the state. Pennsylvania is the first state to add a “Green Amendment” to its constitution. While many states include environmental provisions in their state constitutions, only Montana and New York similarly give environmental rights the same constitutional standing as other fundamental freedoms such as speech, religion and property rights. Constitutional amendments that meet the “Green Amendment” definition are proving their value whenever they are invoked. The recent youth climate victory in the case of “[Held v. Montana](#)” as well as the Delaware Riverkeeper Network's successful environmental rights arguments in the case of [Robinson Township, Delaware Riverkeeper Network, et.al. v. Commonwealth](#) cited multiple times in the decision at hand that defeated the pro-fossil fuel fracking law known as Act 13, are precursors to today's victory demonstrating that giving environmental rights highest constitutional standing is essential if We The People are to effectively hold our government accountable for swiftly and meaningfully addressing the climate crisis.

[It is not just in the climate space that Green Amendments prove their value.](#) They have also, and are also, helping communities address a wide variety of other environmental harms related to water pollution, air pollution, toxic contamination and disproportionate impacts to environmental justice communities. Due to the [Green Amendments For The Generations](#) movement and organization started in 2014, [New York passed its Green Amendment, 17 states have proposed Green Amendments currently under consideration, and half a dozen additional states are on the path towards Green Amendment proposals.](#)