



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



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.

Pennsylvania Env't Def. Found. v. Commonwealth (PEDF IV)
255 A.3d 289 (Pa. 2021)

After the Pennsylvania Supreme Court (in [PEDF II](#)) reversed and remanded the Commonwealth Court's decision (in *PEDF I*), the Commonwealth Court (in *PEDF III*) evaluated the issue of whether certain non-royalty monies received by the Commonwealth from oil and gas leases were a part of the “principal” of the trust established by Pennsylvania’s Environmental Rights Amendment, which would make it unlawful for the Commonwealth to spend that money on anything other than the conservation and maintenance of the public natural resources.

As held in *PEDF II*—the trust instrument is Article I, Section 27 of the Pennsylvania Constitution, the trust property or corpus is Pennsylvania’s public natural resources, the Commonwealth is the trustee, and the people of Pennsylvania (both current and future

generations) are the beneficiaries. According to the constitutional text, the Commonwealth of Pennsylvania has a duty to conserve and maintain the public natural resources of the state for the benefit of current and future generations. The *PEDF II* court held that royalties from oil and gas leases were compensation for the public natural resource—a/k/a principal—and thus may only be used for trust purposes i.e. the conservation and maintenance of Pennsylvania’s public natural resources. But what about rental payments, penalties, and bonuses, which are also received by the Commonwealth as part of an oil and gas lease? This was an outstanding question left to be addressed.

Under Pennsylvania Trust Law in effect at the time of the Environmental Rights Amendment’s ratification, trust property could be described as either “principal,” which was the property that was set aside and preserved by the trust, and “income,” which is any return derived from the principal. In what’s known as a successive beneficiary framework, principal was meant to be preserved and then transferred to the holder of the future interest, while the holder of the present interest could enjoy the use of the principal (without diminishing it) and receive the income from the principal.

The Commonwealth Court in *PEDF III* interpreted the intergenerational aspect of the Environmental Rights Amendment (ERA) to create a successive beneficiary framework—a present interest in today’s generation, and a future interest for future generations. The Commonwealth Court also decided that the rental payments, penalties, and bonuses were “income” rather than “principal,” and thus could be used by today’s generation for non-trust purposes i.e. not solely for the conservation and maintenance of Pennsylvania’s public natural resources.

The Pennsylvania Supreme Court in *PEDF IV*, reviewed the Commonwealth Court decision. In *PEDF IV*, the Pennsylvania Supreme Court agreed that these revenue streams were indeed income but disagreed with the analysis of the Commonwealth Court that the ERA created a successive beneficiary framework.¹ The Supreme Court held that the language of the ERA does not distinguish between current or future generations of Pennsylvanians. Rather, future generations “are **included** within the broadly defined” term “all the people”.² The Supreme Court reinforced the “cross generational dimension” of the language of the ERA that makes clear “**future generations are among the beneficiaries** entitled to equal access and distribution of the resources, thus, the trustee cannot be shortsighted”.³ The Court explained that the “unity of interest of current Pennsylvanians and generations of Pennsylvanians yet to come is evident from the structure of the [ERA].”⁴

Accordingly, current and future generations have the *same* interest and right to protection of the “conservation and maintenance of the public natural resources.”⁵ The Commonwealth of Pennsylvania, as the trustee of the public natural resources, “must consider an incredibly long timeline and cannot prioritize the needs of the living over those yet to be born.”⁶ The duty of the Commonwealth of Pennsylvania, when there are two or more beneficiaries, is to “deal impartially with the beneficiaries”.⁷ As such, there can be no bowing to political pressure by

¹ *Pennsylvania Env’t Def. Found. v. Commonwealth*, No. 64 MAP 2019 at 32, (Pa. Super Ct. July 21, 2021)

² *Supra* note 1 slip op. at 35 (alteration in original).

³ *Id.*, slip op. at 36 (alteration in original).

⁴ *Id.*, slip op. at 35.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*, slip op. at 38.

those alive in this current era when Pennsylvania’s officials are making key decisions involving the rights of the people under the ERA.⁸ The Court concluded that, to serve the purpose of the ERA “clearly expressed in its text,” all income generated from the oil and gas leases must be used towards “the conservation and maintenance of Pennsylvania’s public natural resources.”⁹ The Court rounds this all out by explaining the role of the Commonwealth is solely “as a trustee managing the corpus, not as a sovereign owner that may use income in a manner that does not benefit the trust.”¹⁰

⁸ *Id.*, slip op at 37.

⁹ *Supra* note 7.

¹⁰ *Id.*, slip op. at 42.