



Texas Stewardship Amendment Frequently Asked Questions & Answers

What is a Green Amendment?

The Texas Stewardship Amendment meets the definition of the most beneficial kind of constitutional environmental rights amendment known as a Green Amendment. A Green Amendment is a self-executing provision placed in the Bill of Rights section of a state constitution that recognizes and protects the inalienable rights of all people, including future generations, to clean water and air, and healthy environments. Green Amendments serve as a limitation on government authority, and make clear government's duty to equitably protect the environment for the benefit of all the people of the state.

How is a Constitutional Amendment Better Than Legislation for Environmental Protection?

Our state and federal constitutions provide the overarching legal structure, principles and obligations to which all branches of government must conform. All government action, including the passage of laws, regulations, policies and programs are done in service to advancing government's constitutional obligations – government officials cannot change or violate the constitution, they must honor and implement it. Passage of the Texas Stewardship Amendment will ensure that every government official in the state will work to advance environmental protection at every level of the decisionmaking process, rather than wait until the end of the process when the focus is necessarily on acceptance and management through permitting rather than prevention.

Having the Stewardship Amendment will help ensure that existing environmental laws and regulations are implemented to their full potential; will provide a basis for advancing new needed protections (e.g. through legislation, regulation or government action); will provide a basis to secure protective government action when a gap in the law is identified (such as the case with PFAS contamination); and will strengthen the ability of communities to gain access to courts (e.g. demonstrate standing or bring a constitutionally-based challenge) when their rights have been infringed upon by government action, inaction and/or activities.

Why is the Stewardship Amendment beneficial for environmental justice protection?

By recognizing environmental rights as individual rights that belong to all people, it becomes constitutionally mandated that government decisions and actions protect these rights for all people and that government is not entitled to undermine/sacrifice/ minimize the rights of one beneficiary community in order to enhance/protect the rights of another beneficiary community. To ensure absolute clarity, the Texas Stewardship Amendment explicitly requires equitable protection of environmental rights for all Texans. As a result, environmental rights must be protected regardless of race, ethnicity, tribal affiliation or wealth.

Why does the Texas Stewardship Amendment require that environmental rights be protected “equitably” instead of “equally”?

The difference between “equal” and “equitable” is important. While “Equal” means that all people have the same opportunity to enjoy and benefit from healthy natural resources their right to a clean and healthy environment, “Equitable” recognizes the different and disparate existing conditions of communities when comes to accessing or enjoying healthy environments. “Equitable” recognizes that not all people or communities have the same access to healthy natural environments, nor the same ability to ensure their rights are enforced and respected. Utilizing the term “equitable” recognizes that some individuals and communities do not have the same access to legal resources, money and political power as others. Equity also recognizes that some communities have been polluted much more than others and to achieve a fair environmental outcome requires considering and addressing that historic and existing condition. By ensuring a obligation for “equitable” protection, the TX Stewardship Amendment will require that government take a particular community’s history of pollution, environmental degradation, discrimination and access to resources (natural, financial and political) into consideration when making and implementing actions and decisions that affect the environment. Mandating “equitable” protection will ensure that conscious actions and steps are taken to achieve fair access to, and benefits from, clean, safe and healthy environments and the many benefits they provide.

How Will the Texas Stewardship Amendment Affect Government Decisionmaking and Activities?

A Texas Stewardship Amendment will provide critical guidance that ensures all government decisionmaking - substantively and procedurally - considers environmental impacts early in the process when prevention of pollution, degradation and environmental harm is most possible; requires equitable protection of all communities strengthening environmental justice; ensures consideration of cumulative impacts over space and time; considers the protection of present and future generations; and considers science, facts and impacts as part of the decisionmaking process in order to fulfill the government’s trust obligations. The amendment will ensure that all impacted rights are balanced and addressed and will only allow for infringement when there is a demonstrated compelling state interest and genuine effort to minimize the harm. When all else fails, the Stewardship Amendment will provide a backstop that can be used by community, public, government and business interests to provide a check on government authority that overreaches and fails to protect environmental rights. In addition, because it is self-executing, the amendment can help address community harms that have not been addressed by existing legislation, regulation or government action. And, the TX Stewardship Amendment will encourage sustainable, environmentally protective, and innovative development, industry, and business growth.

Will the proposed Stewardship Amendment inspire an unacceptable rush of lawsuits or frivolous litigation?

While the constitutional language will support important legal claims essential to address environmental pollution and degradation harmful to the lives of the people of Texas, it is not expected to support a sudden rush of litigation and will certainly not support an onslaught of frivolous litigation. In Pennsylvania, Montana, and New York, the three states that have constitutional Green Amendments of this kind, the legal actions filed have been to address serious issues of public concern such as protecting drinking water, securing government action needed to ensure clean-up of toxic contamination by responsible parties, protecting local zoning authority, and supports government enforcement against environmental law violations. Texas, like all states, have standards of conduct with serious ramifications for violation, that prevent lawyers from pursuing frivolous lawsuits. Notably, in PA, MT and NY, the three states with similar amendments, there are zero constitutional environmental rights claims dismissed by a court as frivolous.

If a Violation of the Amendment Is Found What Will Be The Remedy?

Violations of the TX Stewardship Amendment will be addressed through equitable remedies/relief meaning the government will be required to undertake action, or refrain from action, in order to prevent or stop an identified constitutional violation and to restore infringed upon environmental rights. For example, provisions of a law declared to be unconstitutional cannot go into force and effect; a permit issued that will cause an unconstitutional violation is declared invalid/void until/unless the constitutional infirmity is remedied; a law that requires clean-up of a toxic site by responsible parties must be enforced. Redress should not take the form of money damage payouts but will instead ensure the harm that is impacting individuals/communities is remedied.

How can legislators be responsible for protecting the right to clean water and air or a healthy environment when these are not entirely within the control of any one state?

Rights enumerated in the Bill of Rights are inalienable rights that the people reserve unto themselves to be protected from government infringement. Just as with other rights in the Bill of Rights, government has a duty to take what actions it can to protect these rights within its jurisdiction and to ensure that its own actions do not induce, garner or allow for infringement. But just as government officials in one state do not have the power to prevent acts or activities outside the boundaries of their jurisdiction that might overreach and affect constitutional rights in another jurisdiction, the same holds true for environmental rights. Each state is bound to take what action it can to respect and protect the environmental rights of the people within its jurisdiction, and to ensure that its actions or activities do not cause or contribute to infringement.

How will terms like ‘clean’ or ‘healthy’ to be defined?

The language in the proposed TX Stewardship Amendment is characteristic of Texas Article I Bill of Rights language. Terms such as ‘clean’ and ‘healthy’ are no less clear than the right to be free from “*unreasonable seizures or searches*”, the right to “*liberty of speech*”, the prohibition on “*excessive*” bails or fines. This overarching language ensures the amendment will accomplish the protections the people need across all aspects of the right, and ensures the protections can withstand the evolutions of society and of time.

The same process used to inform and define these other constitutional terms and rights will ensure proper interpretation and definition of the Stewardship Amendment. As with other Article I rights:

- ✓ definition will begin with the legislative and executive arms of government through passage of legislation, regulations, policies, and decisionmaking that respects and protects the rights. That existing definition will provide a starting place for the legislature and the courts.
- ✓ It is then incumbent on the people and the courts to challenge and/or support such decisions through the judicial system, which will provide further refinement, guidance and understanding as to how these terms are to be applied and fulfilled. If a robust, transparent and informed process was followed in defining and applying the constitutional language, the courts will be inclined to grant deference.

Is the Stewardship Amendment only forward looking – does it only deal with future pollution and government action or can it be used to remedy existing and ongoing problems created in the past?

The Texas Stewardship Amendment can help remedy constitutional violations that were created by past action but are being left unaddressed or perpetuated by government action in the present. For example, when a permit is renewed that will allow the perpetuation of pollution discharges so severe they result in a constitutional violation, that permitting decision made today should be guided by, and protective of, the constitutional environmental rights protected by the amendment.

Does the Stewardship Amendment mean government can never infringe on constitutional environmental rights?

If governmental action will infringe on environmental rights, it will be upheld if it meets certain constitutional mandates. For example, if the State can establish there is a compelling state interest and that it sought to minimize the degree to which the rights are violated, then this well recognized principle of law could be relied upon to uphold the infringement, but at the same time it will ensure there was effort to minimize the level of environmental rights and natural resources harm and that there is sound public justification for the outcome.

Will the Stewardship Amendment Over-extend or Overwhelm the State Budget?

A primary goal of the Stewardship Amendment is to secure government decision-making that avoids environmental harms. By preventing harmful and costly environmental degradation that impacts health, safety, business operations, and requires significant response costs from local and state governmental entities, the Texas Stewardship Amendment will protect government budgets and people from avoidable and costly monetary outlays.

The anticipated remedies for constitutional violations will be equitable and focus on solutions that end the unconstitutional government action and/or restore restoration of environmental rights, the remedies are not anticipated to be money damage payouts.

Do any states currently recognize environmental rights and natural resource protections in this way?

Pennsylvania, Montana, and New York have constitutional language that fulfill the definition of a Green Amendment. (See the Green Amendment checklist at: <https://GREEN-AMENDMENT-Check-List.pdf>). Cases that have interpreted and applied existing Green Amendments can be found at the resources tab of the www.ForTheGenerations.org website.