



Green Amendments Help Address the Climate Crisis, Advance Clean Energy Solutions & Secure a Just Energy Transition.

Taking On The False Narratives Of The Opposition

Green Amendments provide a strong foundation upon which to address climate change, and to advance a just transition to clean and renewable energy while ensuring equitable environmental protection for all communities. Protecting our environment as a fundamental right that guides all government action will ensure people are healthier, communities are safer, that state-based energy economies are robust and sustainable, and that all people can enjoy the stable and steady economic growth a healthy environment provides.

Green Amendments fill a gap in U.S. environmental protection law. The failure to recognize environmental rights was an oversight of history that the people across the nation are now seeking to remedy. The right to clean water and air, a safe climate and healthy environment are essential human rights, no less deserving of constitutional protection than other civil and political rights.

In 2023, industry lobbyists began advancing a series of false narratives about Green Amendments, including the impact a Green Amendment has for clean energy projects and for addressing the growing climate crisis. The attacks initially focused on New Mexico's Green Amendment movement but in subsequent years were used in Nevada and Washington, and began emerging in east coast states as well. This memo is a multi-state version of our response to the false narratives advanced by the high paid industry lobbyists so people can be armed with the truth!

Green Amendments Create a Substantive & Enforceable Right that Includes a Safe Climate.

Green Amendments create a substantive right of the people to a clean, safe and healthy environment. Green Amendments often include an explicit obligation to protect a state's natural resources. The right to a safe climate is protected by explicit mention and/or by the scientific reality that climate change impacts all facets of the environment (and therefore protected environmental rights) including water, air, biodiversity, flora, fauna, ecosystems. As a result of the substantive environmental rights of the people:

- ✓ government officials become constitutionally obligated to protect the right to a healthy environment, including a safe climate;
- ✓ government action that unconstitutionally infringes on environmental rights by advancing environmental degradation, including an unstable climate, is prohibited;
- ✓ the duty to protect environmental rights requires and supports government actions, policies, programs, decisions and permitting that protect the environment and address climate change, which necessarily includes the advancement of good quality, clean and renewable energy, and protection of critical ecosystems important for climate stability.
- ✓ The legal principles reflected in Green Amendment constitutional language fully embrace the United States democratic system of governance, recognizing the role of all branches of government, including the legislative branch, executive branch and judicial branch, as well as local government.

Learn More At: www.GreenAmendments.org

Green Amendments Create a Procedural Right of the People & Duty on Government to Undertake a Thorough Pre-Action Analysis of Environmental Impacts that Can Avoid or Minimize Environmental Harms.

Part of the constitutional duty of government requires understanding the constitutional implications of proposed action prior to taking that action. The obligation to ensure proposed government action will not infringe on environmental rights, or, if it will, to ensure that a compelling state interest is to be served and that all measures have been taken to minimize the infringement, requires thorough review, information and understanding prior to government acting.

This procedural obligation of a thorough pre-action analysis is strengthened by Green Amendment language that recognizes the government as a trustee of the state's natural resources with a fiduciary duty of prudence to ensure full understanding of the ramifications of a proposed action for the people that are the legally-recognized beneficiaries of the constitutional trust.

This duty to engage in a pre-action analysis and full consideration of the environmental ramifications resulting from proposed government action serves multiple critical functions, including:

- ✓ Ensuring a fully-vetted final outcome that protects the substantive environmental rights of the people;
- ✓ Creating the opportunity for needed adjustments to a proposed action or project (including a clean energy project) early in the review and decisionmaking process that can avoid environmental or community harm at a time when adjustments are more accessible and less costly;
- ✓ Can result in adjustments that can avert a legal challenge because legitimate concerns have been considered and addressed as part of the constitutional review and decisionmaking process;
- ✓ Can result in rejection of a constitutionally infirm proposal early in the decisionmaking process, before there has been an irretrievable commitment of resources;
- ✓ Ensures a robust review of the project/proposal that can help support government action in defending possible legal challenges.

The Inter-Generational Protections Provided by Green Amendments Strengthen the Obligation & Opportunity for Climate-Protective Government Action, Including Support of Clean Energy Initiatives.

Green Amendments, with rare exception, mandate that environmental rights and natural resources be protected for the benefit of both present and future generations. Future generations are entitled to equitable protection of their environmental rights and the natural resources of the state. Protecting the environmental rights of future generations necessarily requires recognition of the cumulative harms resulting from pollution and environmental degradation; as well as the cumulative benefits of good quality programs and projects. The cumulative nature of harms and benefits, and the entitlement of future generations to an environment of quality and safety, means Green Amendment constitutional protections will:

- ✓ Ensure environmental pre-action assessments include a focus on the cumulative impacts of proposed action – cumulative impacts across geographies but also across generations;

- ✓ Advance climate stability as a priority goal of all government decision making;
- ✓ Incentivize the advancement of well-sited, constructed and operated clean energy projects;
- ✓ Ensure that protection and restoration of ecosystem and environmental health – with the cumulative benefits they provide for climate and environment – is also prioritized;
- ✓ Strengthen the legal defense of good-quality clean energy projects and proposed government action by creating a right of future generations and strengthening the compelling state obligation to protect future generations.

Green Amendments Can Help Ensure Best Quality Clean Energy Projects & Outcomes.

Green Amendment constitutional language supports appropriately sited, constructed, and operated clean and renewable energy projects. Green Amendments require that government agencies and boards are fully reviewing, assessing and responding to the benefits and impacts of clean energy projects early in the process, and are able to secure needed modifications to address environmental or community harms, and to ensure that BIPOC and low income communities are not repeatedly, consistently and disproportionately impacted under the guise of benefitting everyone else.

Green Amendments recognize that not all clean energy proposals are alike and that sometimes developers propose projects that are inappropriately harmful. Green Amendments ensure early and meaningful reviews that allow for the identification and requirement of modifications that can improve and avoid or minimize environmental harms – thereby improving the outcomes of the project. Identifying the need for modification or adjustment early in the decisionmaking process can allow for a broader array of options that might address the issue of concern, and can allow for modifications to be more accessible and less costly. Sometimes more robust review earlier in the process will demonstrate that the best outcome is rejection of a project or proposal, and allow for that rejection to come before there has been an irretrievable and expensive commitment of resources or opportunity costs.

If a clean/renewable energy project is sited in a location where water pollution will inflict significant harm individually and/or cumulatively for an environmental justice community; where resulting pollution could impact a community's drinking water supply; where a species is placed in jeopardy of extinction; where the proposal calls for serious degradation such as massive tree clearing that cannot be defended scientifically, factually or legally or if there is an alternative and less harmful location available; then there is potential for a meaningful constitutional claim to advance. In such situations rigorous judicial oversight is appropriate and should be embraced by good government officials as helpful to advancing a sound project that protects the environment overall, rather than as a negative because it may require a corporation or government regulators to undertake essential due diligence to ensure a cleaner and more environmentally protective project.

Green Amendments Help Ensure a Just Energy Transition by Creating a Constitutionally Protected Environmental Justice Obligation.

By recognizing that all people have an equitable right to a clean, safe and healthy environment, Green Amendments are a powerful tool for ensuring a just energy transition, ensuring that the impacts of a clean energy economy (recognizing that all energy will have some level of environmental impact, albeit less than the fossil fuel industry) do not fall solely or primarily on BIPOC communities. Green

Amendments ensure that environmental justice is always given high priority when government acts. The chosen language and Bill of Rights/Declaration of Rights placement emblematic of Green Amendments can be relied upon to pursue environmental equity and justice, even in those circumstances when existing laws and regulations are unable to do so.

It would be disingenuous to suggest that existing laws ensure necessary environmental protection and environmental justice in all circumstances – Green Amendments can remedy that gap in protection, and empower government officials with the opportunity, obligation and authority to always ensure equitable protection of environmental rights, including when pursuing a just energy transition from dirty fossil fuels to clean energy projects, including energy efficiency.

Green Amendments Can Help Defend Good Quality Clean Energy Projects From Legal Challenge.

Green Amendments may be of significant help in fending off legal challenges, or defending against those without merit, that clean energy projects currently face in and out of the court room in communities across America. Large scale clean energy projects are often the focus of legal challenge under existing state and federal law. Green Amendments are not expected to, nor have they in fact, exacerbated the landscape of legal challenge large scale clean energy projects face. While Green Amendments may add a claim to cases that will be brought regardless of the existence of a constitutional right, they have not, in fact, been the foundation for any legal challenge brought to stop a clean energy project.

Importantly, when it comes to clean energy proposals, Green Amendments can help fend off legal challenges brought against well sited and planned clean, renewable energy projects.

- ✓ By mandating early and comprehensive environmental assessments throughout the decisionmaking process by all involved governmental bodies, Green Amendments can help identify and address environmental and community issues of concern at a time when modifications are more accessible and less costly, and in a way that can avert harms and prevent community opposition, including in the courts.

But in those instances when legal challenge is unavoidable, Green Amendments can help secure victory in the courts for good quality clean energy projects.

- ✓ By requiring, and securing, robust environmental rights and environmental impact reviews to inform government decisionmaking prior to final action being taken, Green Amendments heighten the legal strength and integrity of approvals that are given, and as a result will strengthen the legal defense of appropriately sited, constructed and operated, clean and renewable energy projects.
- ✓ This strengthened legal posture will exist regardless of the basis of the environmental challenge – whether it is based in constitutional rights or is grounded in other implicated statutes or regulations.

In addition, recognizing that environmental degradation and climate change inflicts human suffering, irreversible natural resources damage, and generational harm, and therefore approval of quality clean

energy projects serves a compelling state interest, Green Amendment environmental rights provide additional legal strength to clean energy approvals that can survive “strict scrutiny” legal review. In the law, government action that infringes on fundamental constitutional rights are deemed legally justified when essential criteria are met, including: the government action will serve a compelling state interest, the action taken is closely tailored to accomplishing that interest, and there is a demonstrated effort to minimize the level of infringement (i.e. environmental rights harm).

As long as government officials fulfilled their constitutional pre-action review obligations and took the steps necessary to minimize environmental harm, Green Amendments provide an additional (and often critical) legal defense to unwarranted legal challenge of clean energy projects.

Recognizing the State as Trustee of Natural Resources Offers Additional Strength & Clarity.

Green Amendments that complement the recognition of environmental rights with a trustee obligation to protect natural resources for present and future generations, strengthen the duty of government to address the climate crisis, including by supporting clean and renewable energy projects over the perpetuation and ongoing creation of new dirty energy projects.

Trustees have clear and enforceable fiduciary obligations, including the fiduciary obligations of prudence, loyalty and impartiality.

The Duty of Prudence mandates that a trustee exercise ordinary skill, caution, prudence, and act in an informed and cautious way in managing the corpus of the trust.

The duty of prudence strengthens the right of the people of the state – who are the beneficiaries – to a fully informed pre-action environmental analysis that must include the cumulative and generational impacts of government action. The duty of prudence requires that government engages in informed decision-making and uses reasonable care and caution when natural resources and environmental rights are implicated. The duty of prudence embraces the precautionary principle and government erring on the side of protection in decisionmaking.

The Duty of Loyalty requires a trustee administer the trust solely in the interest of the beneficiaries.

The duty of loyalty ensures the state’s natural resources – the trust resources – are managed for the benefit of the people/beneficiaries, and prevents government management of, and decisionmaking regarding, natural resources from being overwhelmed by private economic interests or the political interests of involved government officials. It also ensures a loyalty to, and consideration of, all the beneficiaries regardless of race, ethnicity or generation.

The Duty of Impartiality mandates that the trustee treat all beneficiaries equitably.

The obligation to treat beneficiaries “equitably” is concerned with being fair and just. This is different from treating people “equally,” which means treating each person the same, regardless of circumstance. *Equitable* treatment may require different methods and courses of action in different communities; but in the final analysis, to be equitable, environmental protection must be balanced fairly and justly, across all communities, and with other rights enshrined in the Constitution. The duty of impartiality will ensure equitable treatment of all beneficiaries regardless of race, ethnicity, socioeconomic status, or generation.

There is nothing in the experience of Pennsylvania, Montana or New York to suggest that Green Amendment protections will do anything but support the strong and needed progress of clean and renewable energy projects.

The cases brought pursuant to Green Amendment environmental rights in Pennsylvania, Montana and New York have all been to advance quality policies and programs to protect a safe and stable climate. To the extent legal actions brought have included clean energy projects, the focus of the challenge was not to stop a project but to enhance it with improved environmental protections such as enhanced stormwater management or monitoring to prevent pollution and environmental degradation. (You can read more about these cases on the Resources page of our website www.GreenAmendment.org.)

Green Amendments Support Good Government Action to Protect the Climate.

Among the specific outcomes with regard to the climate that may result from having a Green Amendment in a state's constitution:

- Government officials will be able to use the constitutional environmental rights provision to support and defend proactive government action to advance clean energy projects;
- Existing laws, regulations, and authorities will now be interpreted, applied and utilized in ways that are beneficial for addressing climate disruption, to protect the environmental rights of the people and to help government fulfill its trustee obligation to protect the state's natural resources; thereby creating new and strengthened opportunities for advancing clean energy projects;
- Recognizing protection of the climate as a compelling state interest, complemented by the constitutional obligation to protect climate, environment and future generations, will help fend off inappropriate challenges to well developed and proposed clean energy projects;
- There can be a pathway to check government action – e.g. legislation, regulation, permitting -- if it will unreasonably impair the rights of people to a clean and healthy environment, *including climate*; thereby helping to keep the playing field level and clear for advancing clean energy rather than the current prioritization of fossil fuel development;
- Government will be incentivized to analyze climate impacts as part of all decision-making, thereby strengthening the obligation and opportunity for supporting clean energy, and disincentivizing climate disrupting actions and decisions;
- The obligation to protect the right of the people to a healthy environment, including climate, and the duty to protect natural resources equitably for all communities, including future generations, provides not just the framework, but the constitutional duty, to prioritize government initiatives and decisions that proactively support and advance well planned, sited, and implemented clean energy projects; and
- Recognizing that all energy projects will bring a level of environmental impact – positive and negative - the constitutional obligation to guarantee equity in the implementation of the constitutional right will ensure that the impacts and protections of such projects are fairly advanced across a state's communities.