



Elements of a Successful Constitutional Environmental Rights Amendment

In order for a Constitutional Environmental Rights Provision to carry the same protective weight given to the Pennsylvania Article I, Section 27, Environmental Rights Amendment it should include a number of key elements including:

- ✓ The provision should clearly be grounded in a response to ecological impacts occurring or that have historically occurred in the state with clarity as to this responsive connection. This ensures the legislative history and practical realities that can help guide the court's desire to interpret and implement the provision strongly.
- ✓ The provision should mention specific environmental values to be protected such as pure water, clean air, ecologically healthy habitats, etc. But at the same time it should include a holistic perspective on the values of protecting a healthy environment so that it cannot be interpreted in such a limited fashion as to become weak in ensuring its environmental protection goals.
- ✓ The provision must be self-executing so it does not require passage of laws in order for it to take effect and for the environmental rights of the people to be vindicated. If the provision requires other laws and actions for it to take effect then its power and implementation can be avoided or undermined by a legislature simply failing to take that required action, or to take it in such a way as to limit the effect of the provision.
- ✓ The provision should be generational in focus, i.e. it should explicitly acknowledge that the environmental rights belong to both present and future generations and therefore must be protected for all generations. Mandate protection of the environmental rights of future generations ensures the high level of protection necessary to truly fulfill that moral obligation to children and all future generations to come.
- ✓ The provision should recognize that environmental rights are inherent, indefensible and inalienable rights of all people.
- ✓ The provision must ensure the environmental rights asserted are characterized as "rights reserved to the people". One way to accomplish this is to ensure the provision is included in

the Declaration of Rights section of the constitution to offer clarity that these are inherent and inalienable rights that the people have reserved for themselves from government, as long as that provision in the State Constitution is clear that the rights enumerated are reserved rights that are inherent and inalienable and belong to the people regardless of constitutional pronouncement. Including the environmental rights provision in the Declaration of Rights should make clear that the rights are protected by the Constitution but are not granted by the constitution. If the rights were granted by the Constitution then they could also be removed by it and therefore this recognition of their existence as inherent and inalienable rights that pre-exist the Constitution is important.

- ✓ The presence of the environmental rights provision in the Declaration of Rights section ensures that the environmental rights are on equal footing with other political rights such as property rights, freedom of speech rights, and other political rights. Making clear that environmental rights are on par with these other human rights also suggests the need for both assessment of impacts to an action or inaction and a balancing with other rights provided for in the Declaration of Rights.
- ✓ Presence of the provision in the Declaration of Rights and as such are inherent rights not created by the Constitution also offers clarity that the provision is a limitation on government action or inaction that would otherwise infringe on these rights.
- ✓ The provision should identify environmental rights as being rights of every individual, not just collective rights of the state as a whole and of future generations.
- ✓ The provision should recognize a state's public trust duties. But the provision should be careful to broadly define the corpus of the trust to include more than simply state owned lands and resources, it should include public natural resources and environmental values as well.
- ✓ The trustee responsibilities to protect the environmental values should clearly apply to all branches and all levels of government.
- ✓ The provision should make clear that the settlor of the trust is the citizenry of the state.
- ✓ The language should specifically use the word "trustee" to solidify the protection obligation and the relationship between the government and the citizenry – the government is not the proprietor of the environment, but is the trustee. Using trustee language implicates traditional trustee duties such as loyalty, prudence, impartiality, and providing the necessity for an accounting of the trust. Using trustee language and the obligation to account for protection of the resources raises with it the necessity of pre-action analysis as part of the trustee obligations.
- ✓ The provision should include typical language to describe the trustee obligations such as "conserve and maintain" which clearly includes both prohibitory duties (i.e. the state has an obligation to refrain from legislative enactments, executive action, permitting or otherwise encouraging the degradation, diminution, or depletion of public natural resources that would

occur through direct state action or indirectly, because of the state's failure to restrain the actions of others) and affirmative duties to protect the environment.

- ✓ The provision should necessitate an analysis that ensures actions taken, decisions made, and decisions not to act do not infringe upon the environmental rights granted.
- ✓ It should be written in such a way that the court can use the plain language of the provision for its interpretation and application – this means clear language that can be easily interpreted and applied without reference to other rules of statutory construction.

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