



## GREEN AMENDMENTS FOR THE GENERATIONS

Pure Water. Clean Air. Healthy Environment.

## A GREEN AMENDMENT Making Environmental Justice A Real Obligation of Government

**A Green Amendment provides a way to embed in a state Constitution principles that ensure environmental justice is a substantive obligation of government, not merely an aspirational goal, an obligation focused primarily on process, or an inequity only corrected through policy initiatives. A Green Amendment creates the constitutional mandate that each person, regardless of who they are or where they live, has a right to clean water, clean air, a stable climate and a clean and healthy environment.**

An effective Green Amendment should be placed in the Bill of Rights/Declaration of Rights section of a Constitution and should include both an individual rights clause and a public trust clause thereby ensuring protection of individual as well as community rights, and ensuring government has a legal obligation to treat all people and communities equitably when it comes to protecting their rights to a clean and healthy environment.

## THE IMPORTANCE OF THE ENVIRONMENTAL JUSTICE MOVEMENT

Practices such as housing discrimination, redlining, zoning focused on repeatedly locating polluting operations in the same communities, and institutional racism have resulted in communities of color, indigenous, immigrant and/or low-income communities being situated in highly-polluted areas with decaying infrastructure and toxic sites, such as landfills, superfund sites, industrial operations and major roadways. Additionally, communities that depend on a limited set of industries for jobs such as mining or factory work, suffer environmentally and economically when the operations close down, leaving behind high levels of environmental damage and a lack of other economic opportunities until some new industry comes to town. In addition to the role of government in advancing unjust environmental decisionmaking, polluting industries often target communities of color, indigenous and low-income communities under the guise of jobs, attempting to get residents to rationalize detrimental impacts to their health and their community for short-term economic payoffs. Such practices have led to widespread, disproportionate environmental inequities, resulting in some communities being seen as expendable so that others may live in clean and healthy environments. The environmental justice movement has been a response to these tremendous environmental, health, and safety inequities.

## HOW CAN A GREEN AMENDMENT ADVANCE ENVIRONMENTAL JUSTICE?

Wherever there are disproportionate environmental burdens, a Green Amendment can provide a way to push back against further degradation as well as focus efforts on needed restoration. Embedding environmental rights in a state Constitution provides a powerful tool to focus government decision-makers directly on the immense health and environmental burdens that many communities face and to hold governmental officials accountable when they continue actions, activities, and decisions that increase that burden. Green Amendments help to *prevent* potentially-vulnerable areas from taking the brunt of adverse environmental impacts. Green Amendments also focus government on the need to restore healthy environments in order to ensure equitable access to, and enjoyment of, healthy environments and environmental rights.

Two central elements of a Green Amendment establish a government's obligation to ensure environmental justice:

- 1) the constitutional right of each resident to a clean and healthy environment; and
- 2) government's fiduciary duty as a trustee of public natural resources to treat all beneficiaries – including both present and future generations, as well as communities across their jurisdiction – equitably.

Equity is thus inherent in each component of a Green Amendment.

## WHAT DOES IT MEAN TO TREAT PEOPLE “EQUITABLY”?

“Equitably” is concerned with what is fair and just. This is different from treating people “equally,” which means treating each person the same, regardless of circumstance.

- *Equitable* treatment requires that government look at the different environmental and public health burdens borne by some residents versus others and account for and address that inequity.
- *Equitable* treatment may require different methods and courses of action in different communities.
- *Equitable* treatment may involve differing levels of effort in different areas, including enhanced efforts needed to remedy past environmental degradation and damage.
- To be equitable, environmental protection must be balanced fairly and justly, across all communities, and with other rights enshrined in the Constitution.
- Equitable treatment seeks to ensure that some communities aren't simply shouldering all the pollution burden under the guise of “jobs.”
- Environmental justice and equity say that residents have a right to live in a healthy place while also having the means to feed their children.
- Equitable treatment seeks to prevent current generations from passing the burden of environmental harm to later generations to later generations.

In order to ensure equitable treatment and fulfillment of the constitutional obligation to protect environmental rights, a Green Amendment requires a pre-action analysis considering the current status of residents' environment and environmental rights, as well as the impacts of a proposed action or activity on their local environment. This analysis necessarily requires data and science. It is not simply a process-focused inquiry.

Government must take the results of the pre-action analysis, including the consideration of impacts, seriously and may not allow proposed projects to proceed if they would violate residents' right to pure water, clean air, and/or a healthy environment. This science-based, fact-based assessment (the pre-action analysis including the impacts analysis) helps to ensure that some communities do not simply shoulder all the pollution burden under the guise of “jobs” or convenience so that other communities may enjoy the benefits of clean water and air, and healthy environments.

From an environmental justice perspective, advance consideration of the environmental impacts from a proposed action or activity on individuals' environmental rights necessarily must address *what is already in the community* and adversely affecting residents. This is necessary both to: 1) understand how much more government would interfere with individuals' environmental rights if it were to permit a particular operation or advance a particular decision; and 2) comply with the government's trustee duties. A governmental entity cannot just look at an operation, action, or decision in isolation. It must understand what pollution, industrial, and environmental burdens a community already bears. It must also look into the future to consider the impact that adding another pollution burden has on the affected community and on future generations. It must address cumulative impacts – both immediate and long-term – in the analysis and the final outcome decided upon and advanced.

A Green Amendment provides a way to make environmental justice more than just a buzzword or a hot topic. It provides a means for making it real for communities across the country that have borne the weight of pollution and environmental degradation for too long. A Green Amendment will greatly enhance the tools available to communities of color, indigenous and low-income communities to remedy current degradation and push back against further devastation, to make real a fundamental human right that no person should suffer disproportionate environmental, health and quality of life burdens because of who they are, the color of their skin, their ethnicity, their income, or where they live.

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