

D I A L O G U E

GREEN AMENDMENTS: VEHICLES FOR ENVIRONMENTAL JUSTICE

SUMMARY

Despite existing laws, communities across the United States are exposed to dangerous environmental conditions that can have devastating effects on public health. One emerging mechanism to address these issues are “green amendments,” self-executing provisions added to a state constitution that recognize and protect the rights of all people, including future generations, to pure water, clean air, and a stable climate. On July 22, 2021, the Environmental Law Institute and Green Amendments for the Generations co-hosted a panel of experts that explored the potential for green amendments to secure the right to a healthy environment and help secure environmental justice for all. Below, we present a transcript of that discussion, which has been edited for style, clarity, and space considerations.

Samuel L. Brown (moderator) is a Partner at Hunton Andrews Kurth LLP.

Maya K. van Rossum is the founder of the Green Amendment Movement and Green Amendments for the Generations.

Antoinette Sedillo Lopez is a New Mexico State Senator and former Professor at the University of New Mexico School of Law.

Terry A. Sloan is the Director of Southwest Native Cultures and the Intergovernmental Tribal Liaison for the city of Albuquerque.

Artemisio Romero y Carver is the Co-Founder of Youth United for Climate Crisis Action.

Samuel Brown: Environmental justice and equity issues have really taken center stage as part of the national conversation on the environment, climate change, and racial equality. And environmental justice has been one of the central focuses early in the Joseph Biden Administration. Just two days ago, the White House came out with new guidance for the federal government’s actions related to environmental justice.¹ There are various developments going on at the state level across the country.

Today’s panel presents a distinct but interrelated issue, in terms of amending state constitutions to include provisions that enshrine environmental protections as fundamental rights. It’s incredibly timely. I’m going to introduce the panel, and then we’ll get started.

Maya van Rossum is the founder of Green Amendments for the Generations. And she, literally, wrote the book—*The Green Amendment: Securing Our Right to a Healthy Environment*—in which she defined and coined the term “green amendment.” She has served as the Delaware Riverkeeper and the leader of the Delaware Riverkeeper Network for more than 27 years. And very relevant to this conversation, she was instrumental in litigation in the Pennsylvania Supreme Court that was one of the first contemporary utilizations of Pennsylvania’s environmental rights amendment in the state constitution.

Next, we have Sen. Antoinette Sedillo Lopez, who has served in the New Mexico State Senate for the past three years. She is a law professor and has taught at the University of New Mexico School of Law for 27 years. She is a former director of an anti-domestic violence agency, and she works on environmental issues in her home state of New Mexico.

Next, we have Terry Sloan. Terry is a Navajo and Hopi Native American and is the city of Albuquerque’s intergovernmental tribal liaison, in charge of working with the 23 tribes of New Mexico and directly with the five surrounding Albuquerque tribes. He is also the director of his non-governmental organization, Southwest Native Cultures, through which he has been an accredited member of the United Nations since May 2011.

Last, we have Artemisio Romero y Carver, who is an artist, poet, and grassroots organizer based in Santa Fe, New Mexico. Since 2019, he has served as a co-founder and steering committee member of Youth United for Climate Crisis Action (YUCCA), a youth-led nonprofit that advances climate justice, democracy, and civil rights. He is also a 2020 Divest Ed fellow and Santa Fe’s 2020 youth poet laureate.

I would say New Mexico is well represented on this panel. There’s a lot going on in New Mexico on this issue,

1. Memorandum from Shalanda D. Young, Acting Director, Office of Management and Budget, Brenda Mallory, Chair, Council on Environmental Quality, and Gina McCarthy, National Climate Advisor, to the Heads of Departments and Agencies, Interim Implementation Guidance for the Justice40 Initiative (July 20, 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf>.

so it's great. Maya is going to kick it off and set the table in terms of what green amendments are and what's going on in this area. Then, we're going to turn to each panelist to provide their perspectives and to comment on what they're experiencing in terms of the relevance of the Green Amendment Movement, environmental justice and climate justice, and so on. We'll have a bit of a moderated discussion and then turn it over to some audience questions.

Maya van Rossum: Thank you, Sam. The most important thing that I'd like people to know about me is that, as a result of my 27 years of being an environmental activist and an environmental attorney, I have come to the realization that here in the United States, our current system of environmental protection laws is fundamentally failing us. We have hundreds of thousands of environmental protection laws and policies, programs, and agencies.

Yet, we have communities across the nation that are drinking contaminated water, breathing polluted air, and being forced to live next to toxic sites. We are facing a climate crisis. And, sadly, environmental racism is not just alive and well across our nation, but I would suggest it is growing, with more and more communities of color, and indigenous, immigrant, and low-income communities being continually and intentionally disproportionately impacted by environmental pollution and degradation.

We don't have to undertake a full investigation into our system of laws to understand that it is fundamentally flawed; we can literally just look at what's happening on the ground to see that our current system of laws *is* fundamentally failing us. And that a new path for environmental protection and for securing true environmental justice really is needed in states across our nation and, ultimately, at the federal level.

I'm here to suggest that what we need to do is raise up our inalienable human rights to clean water, clean air, a stable climate, and a healthy environment. Raise them up so they are given the same highest legal recognition and protection we give to those other fundamental rights we hold dear, like the rights to free speech and freedom of religion, private property rights, even the right to bear arms. These fundamental rights are all protected at a much higher level than our environmental rights.

What this demonstrates is that we need *meaningful* constitutional recognition and protection of our environmental rights. I really want to stress the term *meaningful*. Not just any language will do when it comes to recognizing and protecting environmental rights. We know that just by looking at what's happening across our nation. I have literally looked at every state constitution, and what I can tell you is that the vast majority of states speak about the environment in one form or another. And yet, they are not raising up environmental rights in the way we're talking about today with green amendments or the way we need them to.

For the most part, when we talk about a bill of rights provision related to the environment in these states, the rights that are talked about are things like fishing, hunting, and trapping, or land preservation or navigation. Not clean

water and clean air. In some states, they do talk about environmental rights, sometimes with very powerful and eloquent language. But they talk about it as being good public policy or rights to be protected by the passage of state laws. Frankly, whether those laws are good, bad, or inadequate is not the point. The point of those provisions is that as long as state laws are passed with regards to the environment and environmental rights, the constitutional obligation is fulfilled. It's actually a right to the passage of laws, not to environmental rights, that the provision speaks about.

Long story short, most of the states across our nation that talk about the environment in their constitutions fail to recognize and protect these fundamental environmental rights to clean water, clean air, a stable climate, and a healthy environment. They fail to recognize and protect them on par with the way we protect those other fundamental rights we hold dear, like speech, property, religion, and so on.

Now, there are two states—but only two states—that do actually raise up environmental rights so that they are on par with these other fundamental rights, and that's Pennsylvania and Montana. What is it that Pennsylvania and Montana do differently? Again, I've looked at every state constitution to see what is different about those two states. As a result of that research and my experience, I defined the term "green amendment," which is the kind of constitutional amendment that will recognize and protect environmental rights on par with those other fundamental rights. I've identified what is essential to give that highest constitutional recognition and protection to environmental rights. That's what a green amendment does.

I will discuss a couple elements of a green amendment, which are among the most essential non-sacrificeable elements and the top priorities that I want to highlight. But there are other elements that are powerful and important when it comes to talking about this green amendment concept and advancing environmental rights and environmental justice.

First, to truly raise up environmental rights, the provision that we are talking about needs to be in the bill of rights section of the constitution. That's where we protect all of those other fundamental rights that we hold dear. That's where we need to recognize and protect environmental rights if we want to protect them constitutionally on par with those other rights.

The language needs to talk about the rights of *all* people. Ideally, the language is generational. It needs to be clear about the kind of rights that we're talking about—things like clean water and clean air and healthy environments as opposed to the right to navigate waterways. Those are just fundamentally different.

The provision needs to be self-executing, meaning that it has legal enforceability in its own right, by its own terms. As soon as the constitutional language gets added to the bill of rights section of the constitution, it can be relied upon by the people to seek, secure, and enforce their environmental rights. Or by government officials who want to fulfill their constitutional obligation. And it has to apply throughout all levels of government, from the local town

council up through the state legislature, to the governor's office and all the governmental entities, including administrative agencies, in between.

When people hear me talk about what a green amendment is and note that Pennsylvania is one of the only two states that *has* a green amendment, they quickly jump to the question, does this kind of constitutional protection actually make a difference when it comes to the environment and environmental justice? After all, when you look at Pennsylvania, communities and natural resources across the state are being ravaged by the fracking industry. Yet Pennsylvania did in fact secure its green amendment as the result of the vision and the leadership of Sen. Franklin Kury more than 50 years ago. So, does it really make a difference?

Because of Senator Kury's vision and leadership, in 1971, we got this provision added to the bill of rights section of Pennsylvania's Constitution, which recognizes the rights of all the people to clean air and pure water and a healthy environment, and the duty of all government officials to conserve and maintain the natural resources and the rights of the people across the state. Again, we have fracking. How can that be? What is it about Pennsylvania's story that allowed this to happen?

The sad part about Pennsylvania's story is that almost as soon as this language was added to the bill of rights section of the Pennsylvania Constitution, there were legal actions that resulted in some really bad precedent that came out of the Pennsylvania courts, including the state Supreme Court, which declared the language to be good public policy but not have the same legal strength and enforceability as all of the other provisions in the bill of rights section of the Pennsylvania Constitution.² And this precedent was in place for 42 years, so we had this powerful language in the constitution, but nothing really changed constitutionally and legally for the people of Pennsylvania or their natural resources as a result of these early decisions.

It was during this 42-year time period that fracking came to Pennsylvania's communities and started inflicting incredible levels of damage to the water, air, environment, and communities, with their highly polluting industrial operations. It was also during these 42 years that the Pennsylvania Legislature decided to pass a law known as Act 13,³ which was literally a gift basket to the fracking industry and would allow that industry to advance even more easily across Pennsylvania's communities and environments.

As a result of Act 13, which was passed by the legislature and signed by the governor in 2012, the fracking industry would have had automatic waivers from even minimal environmental protection standards. Because of this law, the fracking industry would have been relieved of the obligation to notify owners of private drinking water wells that their drinking water had potentially become contaminated by nearby fracking operations. Because of Act 13, drilling

and fracking was mandated by virtue of state law to be legally allowable in every part of every community across the commonwealth of Pennsylvania, including in the heart of residential districts, near homes and schools and parks and hospitals and more. While fracking was already wreaking havoc on Pennsylvania's natural resources and communities, with the implementation of Act 13, things were about to get a whole lot worse.

In my role as the Delaware Riverkeeper and leader of the Delaware Riverkeeper Network, I have been fighting fracking for a very long time. When Act 13 was passed, we knew that we had to find a way to challenge it. But the thing is, when laws are passed by legislators and signed by governors, communities have few options for challenging them. They can protest. They can try to get a repeal or amendment. They can try to elect better people to office to try to turn back the clock at a later time. They can accept the law and move on and just suffer the consequences. But none of these options were acceptable to us, and none of them would have resolved the problems that we were facing with Act 13.

We realized at the Delaware Riverkeeper Network that we had another option available to us that is not, in fact, available in most states across our nation. We had this long-ignored constitutional environmental rights amendment. So we decided that we were going to try to turn back those 42 years of bad precedent, and challenge Act 13 as being an unconstitutional violation of the environmental rights of the people of Pennsylvania. The case went all the way up to the Pennsylvania Supreme Court.⁴ And in the plurality opinion, written by the chief justice of that Supreme Court, which was a very conservative court at the time, we got an amazing victory that accomplished our goals.

I want to read a few things from the opinion that came out in December 2013 written by Chief Justice Ronald Castille. He wrote, "By any responsible account, the exploitation of the Marcellus Shale Formation"—the drilling and the fracking—"will produce a detrimental effect on the environment, on the people, their children, and future generations."⁵ The natural resources that were being harmed were resources essential to life, health, and liberty. As a result, the provisions of Act 13 that we were challenging were in fact unconstitutional.

So, we defeated the provisions of the law that we were challenging before they even started. As a result of this legal challenge, we not only defeated some of the most devastating consequences of Act 13 and prevented this exponential expansion of the fracking industry, but equally important, we breathed legal life into that long-ignored environmental rights amendment and restored to the people of Pennsylvania their constitutional rights to pure water, clean air, and a healthy environment. It was a very powerful, far-reaching victory.

2. Commonwealth v. National Gettysburg Battlefield Tower, 454 Pa. 193, 311 A.2d 588, 3 ELR 20876 (Pa. 1973).

3. Act of Feb. 14, 2012, Pub. L. No. 87, No. 13, <https://www.legis.state.pa.us/WU01/LI/LI/US/PDF/2012/0/0013.PDF>.

4. Robinson Township v. Commonwealth, 83 A.3d 901, 43 ELR 20276 (Pa. 2013).

5. *Id.*

In the wake of that victory, we at the Delaware Riverkeeper Network and other organizations and communities in the commonwealth of Pennsylvania have been utilizing the newly enlivened Article I, §27 of the Pennsylvania Constitution to set more protective precedents when it comes to the environment and environmental rights.

As we went forth in doing this work, I thought more and more about the power and the importance of what we had accomplished here. And I had an epiphany, what I now call a green amendment epiphany. I realized that our environmental rights *are* worthy of bill of rights recognition and protection. And that we need the communities across our nation to rise up and demand and defend our environmental rights. I realized that the best way to accomplish this is by having communities seek and secure the passage of constitutional green amendments, like the commonwealth of Pennsylvania has.

Again, I did my research to find what a green amendment is, coined the term, and wrote the book. But more importantly, I started to travel across the nation to actually inspire communities to seek and secure the passage of these kinds of powerful constitutional environmental rights amendments. Since starting this movement, I have been met with amazing interest and passion in states across our nation, with New Mexico being front of the pack, as well as New York.

At this point, we have constitutional green amendment proposals in 13 states, among them New Mexico under the leadership of Senator Sedillo Lopez. In the state of New York, the constitutional green amendment proposal is going before the people in November. So, we may actually have a constitutional green amendment in New York by the end of the year. That will bring us up to a total of three states.

How does a green amendment change things? In broad strokes, a green amendment truly raises up environmental rights, so they are on par with those other fundamental rights. We all know how powerfully the rights to free speech, freedom of religion, private property rights, and gun rights are protected, because they have this bill of rights placement, recognition, and constitutional protection. That same highest power now comes to bear for the environment. It means that all government officials have to focus on prevention of harm first, prevention of a constitutional violation first. They can't jump to the end of the decisionmaking process, the end of the legal process, and simply think about what permits they are going to issue to manage the pollution and the degradation they are accepting as a forgone conclusion. Prevention becomes the number one focus for all government action and decisionmaking.

Environmental justice is truly strengthened and empowered. Because now every individual, regardless of race, ethnicity, or socioeconomic status, has the same constitutional right to a clean and healthy environment. All government officials at every level of government become constitutionally bound to protect the environmental rights of all the people, and they must do so equitably. No more environmental sacrifice zones. It becomes constitutionally

prohibited. We are instilling that generational protection and mindset when it comes to government action. We are making government officials think more long-term.

In addition, informed decisionmaking becomes a constitutional mandate—considering science and cumulative impacts and existing burdens and conditions must be brought into the decisionmaking process. It's not just an information-gathering exercise that we go through and then put on a shelf and ignore. It has to be brought to bear on the decisionmaking process.

Existing laws are now strengthened in terms of their interpretation for environmental protection and justice because all that interpretation now happens through the lens of the constitutional obligation. Where there are gaps in the laws, where water and air and critical resources aren't being protected because there's an absence of law, now people can rely on their constitutional right to clean air, clean water, and healthy ecosystems to secure protection and vindication of their constitutional rights.

The goal of the green amendment is better decisions in the first place out of our government officials. The reality of a green amendment is when our government officials get it wrong, people can have access to the courts to seek and secure the constitutional protection for their environmental rights that they are entitled to, that they need and that they deserve.

But it's not just about the law. It's also very empowering in terms of our mindset. It changes the way we think about the environment. This isn't just something that we leave up to legislators. This is a right that belongs to the people. So it changes how we, as advocates, think about our work and what we are entitled to. And, frankly, it changes how decisionmakers think about their work because they now have this constitutional duty.

From an environmental justice perspective, green amendments can be used to address problematic permitting that might result in the unfair burdening of environmental justice communities by pollution and degradation, or when government officials fail to do their due diligence in bringing to bear the science and the cumulative impacts in an informed decisionmaking analysis, as I mentioned.

It means that when there is an unconstitutional law that has been passed, whether we're talking about legislation or regulation, that is going to result in an unfair burdening of environmental justice communities, people don't have to wait for the damage to be done. They can rely on their constitutional rights to fend off the harm before it even happens, like we did with Act 13.

It can also be used to address existing harms and conditions where constitutional environmental rights are already being infringed upon. For example, in the commonwealth of Pennsylvania we are using Article I, §27 to secure the cleanup of a toxic site with a spreading pollution plume that government officials have been aware of for decades and yet have done nothing meaningful to secure cleanup of the site, except try to figure out how to help a developer develop it while it remains in that toxic condition. But Article I, §27 is helping us to get a cleanup of that site and not allowing that dangerous development to happen.

In the end, we all need and deserve clean water, clean air, a stable climate, and a healthy environment. So we all need and we all deserve a constitutional green amendment in every state constitution across our nation. When we hit the right tipping point, when we are ready, we will also start our movement to get a federal green amendment, to hold federal government officials accountable. We need them both at the state level and at the federal level, but we're starting strategically at the state level and we'll hop to the federal level when the time is right.

I thank you all for joining. And I hope to partner up with all of you to seek and secure green amendments in your state. That's the one thing I ask you to do, to partner up and do this together, because when states try to go off and do it on their own, it can actually be kind of complex to do it the right way and to do it successfully. So, let's partner up and make it happen everywhere.

Samuel Brown: Thanks, Maya. I appreciate it. There are a few things that you touched on that I definitely want to come back to, like your experiences in other states on your road trip around the country. Also, I'd like to talk a bit more about your experiences in Pennsylvania post-Supreme Court victory. But let's put that on the back burner and we'll come back to some of that.

Next, I want to hand it over to Senator Sedillo Lopez to provide a perspective on these issues, and particularly what's going on in New Mexico with green amendments.

Antoinette Sedillo Lopez: Thank you, Sam. It's been fascinating and exciting to partner with Maya to work on a green amendment in New Mexico. I will cover three things: (1) language issues in New Mexico's version of the green amendment; (2) the need for the green amendment to address environmental racism in New Mexico; and (3) the concept of fiduciary duty of why we need this amendment in New Mexico.

We are one of the states that has an environmental provision in our constitution. We have Article XX, §21, which makes protection of the environment of fundamental importance. And it has not been helpful for us as I will explain later.

I am the lead sponsor of a resolution to add a green amendment to the 2022 ballot.⁶ New Mexico meets once a year for its 60-day or 30-day session. We are introducing the resolution during the 2022 session, which will be a 30-day short session. As we heard the amendment in the Rules Committee last session, we revised the language. It's different from the Pennsylvania one in significant ways. It is more consistent with the New Mexico constitutional language in the existing bill of rights.

It also adds language protecting the "cultural, scenic, and healthful qualities of the environment." That protection is really important for a state like New Mexico that has such a significant Native American population and a

lot of tribes with incredible cultural relationships to the land, such as Chaco Canyon and Blue Lake. Because of the deep cultural connection to the land, I am meeting with tribes around the state to garner their support for the amendment.

The resolution also includes the same language in Article XX, §21, but now we will put it in the bill of rights, not in the miscellaneous provisions of the constitution. So, we again declare the protection of the environment to be of fundamental importance to health, safety, and public interest.

The amendment will apply to all of the state and all of the political subdivisions, and it includes specific trustee language. This is important because the government should be the trustee for all of the state's natural resources, which belong to the people of the state of New Mexico. It makes it our responsibility to conserve, protect, and maintain the resources for the benefit of all New Mexicans. The amendment includes protecting the resources for present and future generations, which is an important aspect of a green amendment—it's not just what we need now, but what is good for our children and grandchildren.

Then, we specifically state that the provisions of this section are self-executing. This means that the amendment can be used as a claim for relief with no need for the legislature to create a cause of action or means of enforcing it.

The next thing I want to share is that New Mexico is a majority-minority state. According to the 2020 census,⁷ we have the highest percentage of Hispanics of any U.S. state—49%. Our white population, non-Hispanic, is 36.8%. We have almost 11% Native Americans. Interestingly, African Americans, who constitute a small percentage of the population (2.6%), tend to be concentrated in the Permian Basin, where the majority of our fracking is occurring. We also have a small Asian population (1.8%).

I think these statistics are important because you might think that since people of color are in the majority that New Mexico wouldn't have an environmental racism problem. That's not the case. Historically, people of color in New Mexico are concentrated in some of the most polluted areas, as they are around the country.⁸

What you hear about the Permian Basin sometimes is the sentiment, "let's just sacrifice them; let's not spread the environmental damage any more than that." Well, that area is 58% Hispanic, and a concentration of African Americans reside there. We'll talk a little bit about Mountain View. But if you look at where a lot of the toxic areas are located in New Mexico, like the waste isolation plant in Carlsbad, they tend to be located in areas where people of color are concentrated. The Green Amendment can be a legal tool to be used to stop or slow the concentration of

6. Antoinette Sedillo Lopez, *The Green Amendment for New Mexico*, <https://senatorsedillolopez.com/green-amendment.html> (last visited Oct. 5, 2021).

7. U.S. Census Bureau, *Quick Facts: New Mexico*, <https://www.census.gov/quickfacts/NM> (last visited Oct. 12, 2021).

8. Russell Contreras & Andrew Freedman, *The Toll of Environmental Racism*, AXIOS (Sept. 18, 2021), <https://www.axios.com/hard-truths-deep-dive-environment-environmental-dangers-health-hazards-c22d7f47-0191-43a7-9e69-cd8aeb60c92d.html>.

environmental problems to be located near communities of color.

The other important concept is to create a fiduciary duty by specifically making the government a trustee of the public resources for the environment and the benefit of all. The oil and gas industry comes into this state and thinks the gas belongs to it. The oil and gas, and all natural resources in our state, belong to the people of the state of New Mexico, and the Green Amendment advances this concept. It requires that people be treated equitably, that no one community suffers the burdens of industry more than any other community disproportionately. A green amendment and the equal protection clause in the New Mexico Constitution, read together, advance this concept.

Our Native American communities, specifically the Navajo community in the northwestern part of the state, were hit really hard by COVID. They have a lot of issues in that area. There is a lot of poverty. But the other thing they have is a lot of methane and other discharges from the fracking that goes on in that part of the state. They were hit harder, and they already have more problems with their breathing. They have a higher rate of asthma. So this environmental degradation, as I said, goes hand-in-hand with health issues.

I want to give another example. Right now, in the city of Albuquerque, there is a community called Mountain View. It is the location of our waste management plant, our water treatment plant, a lot of car salvage plants, and some hot mix asphalt, with one plant already engaging in hot mix asphalt burning right in that community. Our sewage plant is there. Fertilizer plants are there. It has been found to have contaminated groundwater already. It's the location of two Superfund sites, and it's got the highest level of air pollution of any place in the city.⁹ Well, there is another hot mix asphalt plant that applied for an air quality permit to run a plant in this area. It is just devastating to see more piled onto this community. I personally think it's criminal.

If we had a green amendment in New Mexico, it could be used and cited in this air quality permitting process. So, the first step has happened. An initial permit has been granted, and now it is on appeal. What I contend is that they have not taken into account the fundamental importance of clean air, water, and land. And they're disproportionately affecting an area that is primarily people of color. Basically, this is a lower-income, working class area, and the location of the highest concentration of both African Americans and Hispanics, and particularly immigrants. It's very clear what's been happening in this community. I believe that the green amendment would reverse this result and really help this community.

Finally, a green amendment in New Mexico would advance a policy that the voters passed in the 1970s. When I joined the senate, I kept citing Article XX, §21, of the New Mexico Constitution and saying this imposes a

responsibility to the legislature to do something. Our Oil and Gas Act had not been modified since 1935. It did not deal with any of the problems that have been caused by fracking—horizontal hydraulic drilling across our state or in the Permian Basin and the San Juan Basin. I was frustrated that the provision seemed to have no impact.

In 2015, Article XX, §21, which is in the miscellaneous section of our constitution, was addressed in *Sanders-Reed v. Martinez*.¹⁰ This case basically said that it doesn't create a trustee relationship between the legislature and the environment. What it does is it gives the legislature power that it already had to pass legislation. And it suggests policy for the legislature, but it does not give the people the right to enforce it.

Particularly galling was that even though the natural resources in our state belong to the people, and we're supposed to be the trustee of them, the court said, well, maybe trustees for water, but not trustees for the environment. That was devastating. When reading this case, you realize it basically made it certain that Article XX, §21 is of little value in this state for pursuing constitutional environmental rights.

When I read Maya's book and I read about what she did in Pennsylvania in terms of stopping horrific regulations that would benefit the oil and gas industry, she became my hero. And I definitely wanted to follow her leadership. So, I said, hey, I'm in. And so did other legislators like Sen. William Soules, who saw Maya speak at the National Caucus of Environmental Legislators. Sen. Mimi Stewart, our president pro tem, was very impressed with her and wanted to do something about it. Sen. Harold Pope and Rep. Joanne Ferrary joined us.

That first session, we had a strong group. And now, we're getting more legislators. Sen. Liz Stefanics has jumped in. Sen. Jerry Ortiz y Pino and Sen. Bill Tallman have jumped in. And now, we're realizing that we need to let any legislator who wants this to join us, so it's a movement not only among the people of New Mexico, but also within the legislature.

I was walking around the Mountain View area recently, and I ran into a sign that read "Emergency Environmental Services, call _____." And I thought, wow. What does it mean to live in a community that has a big sign down one of the residential streets that says that? And you're supposed to call this number if you've got a spill! Is this the future of our state?

We don't have time to waste. This is a tool, a really important tool, to protect our precious environment. And I am really excited to push forward this tool and see how it helps us in New Mexico in so many ways.

Samuel Brown: Thank you, Senator Sedillo Lopez. Terry, I'm going to turn it over to you to provide your perspective, including from a community tribal perspective in New Mexico.

9. Arla Shephard & Ray Ring, *The Environment . . . Is Where We Live*, HIGH COUNTRY NEWS (Feb. 1, 2010), <https://www.hcn.org/issues/42.2/the-environment-is-where-we-live>.

10. 350 P.3d 1221 (N.M. Ct. App. 2015).

Terry Sloan: It is an honor to be here. First, I would like to acknowledge that I'm talking to you today from the traditional lands of the Tiwa Pueblo people. We're the original caretakers of this land, and it is an honor for me to speak from here today. I thank Maya, for your wonderful opening, and Senator Sedillo Lopez, for your wonderful statement.

I am a Diné, or Navajo and Hopi, Native American, born of the Kinyaa'áanii, which is a Towering House clan, and born of the Tó'aheedlíinii—Water Flows Together clan—in Shiprock, New Mexico. I'm a New Mexican for sure. But I'm originally from Tuba City, Arizona, which is in the deep reservation, and now have been an Albuquerque resident for 48 years.

I have been fighting for Mother Earth for more than 33 years, fighting for our sacred water, our environment, indigenous peoples' rights, and human rights. Also environmental justice and climate change heavily for the past 10 years. This is my 10th year as an accredited member of the United Nations.

I am also a Green Amendments for the Generations board member. It's an honor for me to be a part of this organization. I'm a member of other groups, too—Sierra Club, Amnesty International, Environmental Defense Fund, National Parks Conservation Association, 350.org, United Nations Association Albuquerque, WildEarth Guardians, the Albuquerque Climate Coalition, and the Greater Chaco Coalition.

When I first heard about the green amendment, I was contacted by a good friend named Mike Neas. He's the guy who brought Maya to New Mexico back in June or July of 2019. But my first meeting with Maya was in August 2019 over breakfast. And I was hooked in the first five minutes. I could not believe what I was hearing and the reality that we could see a green amendment in New Mexico, within the country, and across the world. I really believe in what it stands for, and what it could do, and what it can do, and what it has done.

My belief, of course, touches on my genealogy as a Native American. I guess it's in our makeup to protect Mother Earth. We are caretakers of the land, and we do what we must to protect it and make sure it stays alive, and sustains us with life. If we don't take care of Mother Earth, we won't have life. As I've said before on many occasions, water is life. So, part of the green amendment will help take care of the land, help take care of the water, and help us breathe clean air.

In my Diné, Navajo-Hopi homelands—I say Navajo-Hopi because that's what they used to call me when I was a kid—we've seen environmental degradation, environmental racism, and environmental discrimination. I was thinking earlier today, when I grew up in Tuba City, one of the biggest employers locally was the coal mine, and people talked about working at the coal mine, and how it was a great thing to have that job there. But in time, we began to see people pass away and die from the coal contamination in their lungs, and cancer, and so forth. Yet that never really connected to people. It was just an accepted way of life and working in the coal mines. But now, today, we are

understanding that that is a real issue. That it has an effect on our people on that level. It brings up the issue, too, of sacrifice zones.

Senator Sedillo Lopez talked about the Mountain View community. I hate to be critical of the city's involvement in it because I work for the city. But I am against that particular asphalt plant coming to our town because it is a sacrifice zone. Growing up here in the past 48 years, I've seen it grow to become even more desecrated and harmful to the people in that region. And we hear about respiratory illnesses that occur in the region, in our town, and it is generally around people of color. The minorities in our city live in that region, because that's where they first gathered when they moved to Albuquerque along the river.

I think it brings to light that we can help combat, prevent, talk about, and identify sacrifice zones. One sacrifice zone that I fight for a lot is another area that Senator Sedillo Lopez mentioned, northwestern New Mexico, which includes the Navajo reservation. On the western side of the state, there's an area that I call fracking alley. I had a client in Shiprock, New Mexico, so I would drive Highway 550 from Albuquerque to Shiprock, which is the eastern side of the reservation and the western side of New Mexico. And I saw the start and growth of the oil and gas industry—it's fracking. Now it has grown to where there are approximately 15,000 wells in this region.

It's just unfathomable, to see that. When you look at a map of those actual sites, it's incredible to see it and it's unbelievable. It's also encroaching and contaminating a sacred site to our people, Chaco Canyon. I have been fighting for Chaco Canyon for the past 10 or 15 years. We've almost gotten legislation, the Chaco Cultural Heritage Area Protection Act,¹¹ passed in the U.S. Congress, which we're still fighting for. We began to see its emergence in the state Senate and Congress in 2018. We're still trying to press that through.

I recently attended an event for the Lummi Nation in the western United States, where they have a movement called Red Road to D.C. The Lummi carvers carved a 25-foot totem pole, which weighs about 4,000 pounds, and what they're doing is taking this totem pole on a trip through sacred sites from the West to the East. They recently stopped in Bears Ears, and then they were in Counselor, New Mexico, to bless Chaco Canyon. It's collecting blessings from everybody in the places that it's going through. We were encouraged to touch the totem pole and pray with it, so we got blessings from it and provided blessings to it. It is on its journey to D.C., and I believe it's going to be presented to President Biden. Its next stop on the way was going to be Standing Rock.

We must all work hard because the fight for environmental justice is daily. It never stops. I want to touch base on what is called the 17 Principles of Environmental Justice. It was created in 1991 at the National People of Color Environmental Leadership Summit. It was designed

11. Chaco Cultural Heritage Area Protection Act of 2019, H.R. 2181, 116th Cong. (2019).

to look at creating a mechanism to help protect Mother Earth, the cultures, the languages, the beliefs, our natural world, our people, whoever is on this planet. A few of the articles read as follows:

1. Environmental justice affirms the sacredness of Mother Earth, ecological unity and the interdependence of all species, and the right to be free from ecological destruction.
2. Environmental justice demands that public policy be based on mutual respect and justice for all peoples, free from any form of discrimination or bias.
3. Environmental justice mandates the right to ethical, balanced, and responsible uses of land and renewable resources in the interest of a sustainable planet for humans and other living things.
4. Environmental justice demands the cessation of the production of all threatening toxins, hazardous wastes, and radioactive materials, and that all past and current producers be held strictly accountable to the people for detoxification and the containment at the point of production.
5. Environmental justice protects the right of victims of environmental injustice to receive full compensation and reparations for damages as well as quality health care.¹²

Those are a few items from the 17 Principles of Environmental Justice. And they're all incredible items that we could talk about further.

Moving forward, I'd like to touch base on areas in environmental justice that can be addressed by the green amendment. First and foremost—and it was talked about by Senator Sedillo Lopez—is oil and gas exploration and development, and mining. It has been devastating, in my opinion, to certain aspects of the state and around the country. We're seeing burning water in Texas. I hate to see it happening. I think the green amendment can help manage and monitor such already-in-place activities.

One thing we have here to supposedly help manage and monitor that is the Oil Conservation Division (OCD) of New Mexico. But the thing about the OCD is that they only require self-reporting. To me that doesn't make sense. They are not going to report every area incident, every accident that we should hear about, and especially those that are going to affect water or the aquifers. We don't hear about those accidents. But I think the green amendment could make a lot of that mandatory, to release this information.

It will help manage future oil and gas development and mining by vetting responsible environmentally, socially, and ecologically minded companies, corporations, and so on. With the green amendment, we can at least get these processes in place to help vet the right companies that can come in.

I will be speaking from the accountant side of me. I know we need, for now, oil and gas development to help generate revenue for the state. So we're going to wean ourselves of this process, but I think in the weaning of this process, we can begin to vet the organizations that come in that want to damage and destroy our Mother Earth here in New Mexico. With that process and with the green amendment, we can enforce use of new technology that better manages emissions and invasive destruction of Mother Earth. With the green amendment, we can develop health safeguards for land, air, and our sacred water. The Greater Chaco Coalition is right now monitoring air in the Counselor, New Mexico, region, where we have seen huge spikes in the air quality, and it does cause respiratory illnesses. It does cause cancer. We have that documented in the local hospitals and health clinics.

One thing that we're looking to do next is put up monitoring systems within our schools. When I was researching the effects of the methane flaring, for example, from the oil and gas installations, I found that the schools had to close their windows during the day because the stench and contamination that was coming into the schools was so intense.

The green amendment will change behavior. It will help us be cognizant of what we need to do and what affects our environment and how to manage our carbon footprint. We can recycle, buy biodegradable products, drive fewer gas-driven cars, buy electric cars, walk, pick up trash, and so on. In other words, become what I have studied how to do at the United Nations: becoming a global citizen. Someone who looks at the environment, the people, the social impacts of environmental issues and social issues that don't just affect you locally, but affect your communities, your states, your countries, and the world. Looking with a more global perspective.

It can help redevelop current and create new community infrastructure with ecologically sound roads, sidewalks, and water and waste pipes; drainage and water treatment systems and facilities; solar power in every home, business, and government building; electric buses and government vehicle fleets; and so on.

The city of Albuquerque is doing that now. I'll promote my city. We're installing solar panels on our buildings. We bought electric buses. We're buying electric cars. And we're installing more charging stations throughout the city. We have charging stations currently in the downtown district.

We can look at redeveloping and upgrading. We are looking at developing and enhancing our bike routes and our walking paths. The city is buying electricity from solar and other renewable energy sources. We're buying energy from the Jicarilla Apache tribe. Through the green amendment, we can look at redefining and redevelop-

12. The Principles of Environmental Justice (EJ), Delegates to the First National People of Color Environmental Leadership Summit (Oct. 24-27, 1991), available at <http://www.ejnet.org/ej/principles.pdf>.

ing our local, regional, and national power sources, our power infrastructure.

The state looked at what it would mean to build a solar power plant. Well, if you build a solar power plant, you can employ almost as many people as a coal-fired power plant. So, we can recover those jobs lost as we close down coal-fired power plants. And they're higher-paying jobs. Those people can be reeducated and take on these new responsibilities in a solar power plant. Again, our state is implementing an energy transition into renewable energy. So we're also taking the lead at that level, to begin that process.

Finally, the green amendment will redefine our food sources. We're bringing to the forefront indigenous ways of agriculture and sustainability. Indigenous peoples have had probably the first sustainable communities on Mother Earth for thousands of years. Western science is now looking at indigenous knowledge and indigenous ways of thinking, agriculture, and philosophizing about our beliefs.

I'd like to say, for indigenous peoples in our communities, we're still here. How did we do it? Hopefully, we can take the lead and teach that. Because I believe there is a movement to begin to talk to indigenous peoples on what they do to sustain their communities.

I'll talk about the Hopi culture. Our lands are desert and rocks. We've learned how to design our landscape and our agriculture to capture water. We tier our landscape to create cornfields and melon fields. There are ways that that can be done. Together, we can all do this. We can find a balance so Mother Earth never stops. Let's keep on doing it.

Artemisio Romero y Carver: Let me give you a bit of context in terms of who I am and what I will talk about. To clarify, I have no legal expertise. That's relevant thematically and also for liability purposes. I recently graduated high school at the New Mexico School for the Arts. I'm preparing at this moment to go to college. I've spent the past three years working specifically around grassroots organizing to combat environmental racism in the state of New Mexico. So, I can't speak to you about the legality of these things per se in a deeply specific way, but I can talk to you about the morality of it and what I've witnessed and what I know to be true from my experiences.

One of the things that I believe and one of the starting points I want to begin with is that morality precedes law and that we have rights before they are ratified. I don't think that we need language or government to tell us that a child breathing polluted air is wrong. I think we know that.

There are a lot of things that we know are inherently wrong or are violations of inherent inalienable rights, whether or not they are ratified. I want to start from that level, with the grounding that what the green amendment is doing is not imposing or spontaneously creating new rights. It's ratifying rights that already exist inherently in our environment.

The reason that the nature of those rights is so important to me, that I devote my life to it, is because those rights

are also being violated. And some of those violations are very visible. Basically, everyone from New Mexico here has mentioned the Permian Basin, and talked about these huge plants and this process by which you can literally see pollution go into the air around this community.

But some of the issues are also existential. I want to talk about both the visible and the existential parts. I want to break it into two categories, too—environmental racism and intergenerational violence. Those are the two kinds of state violence that are best observable to me in New Mexico as it relates to climate and that are also potentially combated by the institution of the green amendment.

We've already talked about environmental racism and what that means, and articulated it very clearly and powerfully. I just want to add a bit more to that definition because I think it's a term that exists in some of our spaces, but it's not always defined and can be kind of anomalous. I'm new to the term, so I might be explaining things that people in the audience already know. I just want to make sure that the language I'm speaking in is as accessible as possible. A term like that sometimes doesn't make sense. Or it doesn't have an inherent meaning for an audience.

In environmental racism, we've talked about sacrifice zones. I think it's worth clarifying what a sacrifice zone is. A sacrifice zone is specifically the government policy of treating communities of color and poor and low-income communities as sacrifices for private industry. Because we have the fracking process, for example, that causes earthquakes and miscarriages and stillborn births and increased cancer rates and asthma. It is a process that in very many ways shouldn't be done. We don't want any of those outcomes. We definitely don't want them around our constituents.

But when that process is done to communities of color, it becomes negligible. It becomes an understandable loss to certain government entities. That belief goes all the way back in terms of policy.

There's another part of environmental racism, too, that's existential. We talked about the fact that the production of fossil fuels disproportionately harms communities of color and other marginalized people. And that's true. But the end result of fossil fuel production, that's the same. When we have these greenhouse gases emitted into the air, and we have this process of runaway climate catastrophe and ecological collapse, then we have to deal with the results of that—results that we're already dealing with.

We're already in the midst of an ecological collapse. We have an opportunity to potentially stem it before it gets worse, but we are in the midst of it. As we deal with the results of that, the people who are the most at risk are the same people whose lives have been sacrificed in the production of this apocalypse.

During COVID, we saw very clearly how the costs of a public health crisis, or a public crisis in general, tend to fall along the same lines of class and race that institutional failings do. We saw that Latinx communities and Black communities and indigenous communities face much higher rates of COVID, and then much higher rates of COVID-related deaths, for a variety of reasons. But because those people often had been exposed more

to situations that would cause public health issues, the asthma rates are absurdly high in the Four Corners area. If you look at a map of coal production and then you look at a map of asthma rates, they overlay and make a very clear correlation.

If you also look at the populations within that area, you'll see that it's harming a lot of low-income, especially indigenous people in that area. You'll see that this is a process that took a whole community's lungs and damaged those lungs over decades. So, then when a disease that specifically harms that cardiovascular system emerged, that community was already at incredible risk.

The same thing is true when it comes to climate change. When sea levels rise, it's the people who can't afford to move who will drown. When food shortages happen, it's the people who already face housing insecurity, or food insecurity, or starvation, who will first starve to death.

My own state of New Mexico ranks either first or second, depending on the year, in child poverty in the United States.¹³ I am very aware that my own community in the south side of Santa Fe has the highest child poverty rate within the state of New Mexico. It has one of the highest child poverty rates within the country. So, it's very clear to me who exactly will pay the cost and who has already paid the cost.

That's the outline of environmental racism. But there's another way that we should talk about the costs of this incoming climate catastrophe. Yeah, a collapse, apocalypse. I have so many words and all of them aren't enough. There's an intergenerational nature, too, as well.

I told you that I started organizing about three years ago. I first started organizing in my sophomore year of high school. Before that, I'd been a pretty politically apathetic person. I was relatively aware of what was going on, but I had that sense, like a lot of teenagers do, and also as a person of color, in a position of generational poverty, that I have no power in this situation. "I did the best that I could do" is a kind of ironic nihilism. So, like anyone with ironic nihilism and maybe too big an ego, I started competing in speech and debate tournaments.

I was at a school with a very small budget for speech and debate, so I had to do all of my own research. I took part in a thing called public policy, which is essentially a forum where people say facts as quickly at each other as they can. That's a form of competition.

I was going through documents and I found a piece of policy from a research group in New Zealand that talked about the high existential risk of collapse to civilization by the year 2050.¹⁴ That scared me in a way that motivated action more than anything else I'd seen, because "high existential risk to civilization by 2050" is a very euphemistic general way of saying the species might end by the time

I'm 50. Like all of human civilization, this whole project, could be over within my lifetime.

That's where this gets generational. We see those same facts. It's not just this one piece of policy I found. I found it again in Intergovernmental Panel on Climate Change reports. We're seeing it in the ways that this heat wave is hitting us that is worse than our climate scientists expected, such that 2050 may be an optimistic time line.

With each younger generation, the harm of extractive industries increases exponentially. When I look at my younger cousins, I have to be made aware that they will die younger than me if this process continues. I pass at 50. My 11-year-old cousin won't make it to 50, maybe not even 40, as we talk about food shortages and resource wars and rising sea levels. It's interesting, right?

We talked about asthma as it relates to COVID. I'm now talking about these impending climate catastrophes that will be obviously lethal. It's a dangerous thing that happens when we fail to regulate, and we fail to protect the environment and resources, because it's lethal. But it's a kind of murder that takes decades. It happens very slowly, but its costs are very huge.

That's the situation. Those inherent rights I mentioned are being violated constantly and are being violated in the most basic way because they are violating our most intrinsic right, which is the right to live.

I know that no one's happy after I finish a statement like that. And I'm not either. I want to give you a little bit of hope, though, because it's not just that. There's also an incredible amount of potential. We see it in these conversations that we have like today, and the world that Terry was talking about before I started ranting. In terms of a future that does not have to be the apocalypse that we've created for ourselves, we can create something different.

So, what's the situation in New Mexico? I want to use this as a small test site, as a case study. We've been organizing for three years in order to get to that future. We've done basically all the things we're supposed to do, using all the traditional channels. We held a big strike outside the governor's office. We gave the governor a letter. We did a sit-in at the governor's office. When that part of the executive branch failed us, we pushed around and talked to department heads and secretaries of state. Then, we most recently lobbied all out during the last legislative session, and endorsed candidates. We worked on bills. We did the whole shebang.

Then, at the end of the last New Mexico legislative session, the legislative process failed to achieve any necessary results in the face of climate change. There were several people in that legislative process who worked very hard and beautifully to get us there. Senator Sedillo Lopez is one of them, Rep. Robert Cabrero as well. But those people were, in my estimation, often outnumbered.

In the year that California burned and Texas froze, very little climate legislation was passed in New Mexico, only a few small regulations. A task force was established around a sustainable transition, and legislation for community solar was passed. Those were wins, but they were not wins proportionate to the danger that

13. Russell Contreras, Associated Press, *New Mexico Child Poverty Ranking Back to 49th in Nation, Kids Count Report Finds*, NEW MEXICO VOICES FOR CHILDREN (Jan. 15, 2020), <https://www.nmvoices.org/archives/13830>.

14. DAVID SPRATT & IAN DUNLOP, EXISTENTIAL CLIMATE-RELATED SECURITY RISK: A SCENARIO APPROACH (2019), <https://www.preventionweb.net/publication/existential-climate-related-security-risk-scenario-approach>.

every single New Mexico citizen is facing. So, we went through the process.

We're going to our legislators and we're asking for this. Too many of them—because they received incredible amounts of oil and gas money—are telling us no. They are choosing the violence of environmental racism and inter-generational harm over saying no to a corporate lobby. So, what do we do when our government is failing to represent us and our electoral process is failing us?

We also have to recognize that our electoral process is not our only means of resistance. That's where the green amendment becomes incredibly relevant to me. We have this process whereby we can find legal challenges to the violence that's happening. When and if—and right now, it's a when—the New Mexico legislative body fails to protect environmental rights within the state of New Mexico, we have the means by which to say you are failing this constitution. That's the other point that I want to make in terms of what's deeply important around this topic.

I do interviews for YUCCA. I'm often in settings where people ask me why I care about the environment. I think that that's a very strange question to ask. First of all, who doesn't? I think we all care about our environment. That I have a roof over my head, that's part of my environment. I don't like getting rained on. There are very straightforward aspects to that.

I care about the trees, and the plants, and the mountains. But I also want my loved ones to be alive. I want the kids younger than me to have a life longer than mine potentially. I want less human deaths. I want safer schools, and homes, and places. I want communities that are allowed to live, and it's a lot larger than the environment.

That's why through the green amendment, when we're able to frame these struggles as issues of constitutional violations as opposed to just environmentalism—not that environmentalism is lesser—we legitimize the climate movement in an entirely new way. I think that could be incredibly useful because part of the issue is that the general language surrounding environmental hazards and the climate movement is a few decades too old.

That's what I want to end on. I know the framework is a small point, but it's one of the ones that I find the most useful and compelling in terms of the green amendment. Thank you all for listening.

Samuel Brown: Thank you, Arte. Each of the panelists was able to provide their perspective. I want to pause to see if any of you have any observations or reactions to anything anybody else has said.

Antoinette Sedillo Lopez: I want to say that it's interesting how New Mexico-focused this panel ended up being. I think it's really important that it is New Mexico-focused because I think the environment in New Mexico is incredibly beautiful but also very fragile. We have seven different climate zones within the state.

I'm so happy to be on the panel with Arte and Terry. I really salute both of their leadership. I thought Arte was at least a college student, if not a law student, when he tes-

tified at New Mexico legislative hearings on the environment. So when he told me he was a senior in high school, I was amazed, because his testimony was so great. And Terry's leadership for so many years has been so important.

But I really want to emphasize that the lessons in New Mexico are applicable to the whole country. We're sort of the canary in the coal mine. I urge people to watch what happens in New Mexico because, where we go, I think the entire country goes.

Maya van Rossum: I think what's so powerful about the different voices and perspectives is that it really demonstrates the point, in real time and real life, how important it is that this is a community effort. All the different elements of our community: whether you're a young person, whether you're a Native American leader, whether you're somebody out there living your life, whether you're a legislator. Whoever it is you are—attorney, artist, activist, just a person who cares about others—there is an important place for you in this green amendment conversation and movement. No one person, no one perspective covers the universe of what has to be talked about in terms of the value and importance of advancing constitutional environmental rights in the form of a green amendment.

So, that's why, when a state or a community is thinking about advancing this green amendment idea, it is so important that everybody be given a place at the table. When we do that, that's how we come up with the best, strongest language.

Every single state where I'm working has different language. They all have the basic fundamentals and there are a lot of similarities because they are basic fundamentals that are really powerful and important and essential. And there are similarities because we're all learning from one another. But every state and every community is a little bit different. So, the green amendment has to represent the views, perspectives, needs, and goals of that state.

The only way you can craft the right language and advance the right message and achieve success is by giving everybody a place and a space at this table and hearing and honoring every message and every goal. Some people are very dedicated and committed to the human protection values of a green amendment. For some people, what resonates a little bit more are the natural resource values and that connectivity with the people. For some, it is the cultural value—so the human health values or the economic benefits.

This panel so beautifully demonstrated that there isn't just a place for everybody in this Green Amendment Movement; there's a *need* for everybody in this Green Amendment Movement for us to truly succeed in both securing them and ensuring that they get fully and fairly and quickly enforced so that we avoid that bad precedent scenario that we have in Pennsylvania.

Terry Sloan: Sam, I'd like to add that it's important, as Arte has eloquently articulated, to make sure we include our youth in these discussions. They need to be heard. They need to be listened to. They bring a whole different

perspective of our future, maybe things we don't think about because we're getting old. Hearing his thoughts, his unfettered desires, and thinking at that level is refreshing to hear. I think we need, again, to make sure we listen to our youth. And think about the seven generations to come. We want to make sure that we have an environment and the land and the rights to the land, air, and water for the next thousand years.

Maybe, we'll still be here in a billion years. Maybe, the green amendment will help us to achieve that. Again, I'd like to point out too that clean air, land, and water is a human and civil right. We need to make sure we attain that and enforce that down the road.

Samuel Brown: I have a few questions that I would like to ask the panel. I'd like to ask one right now because Maya just touched on it. The question is, if the Green Amendment Movement is successful and state legislatures are able to amend the state constitutions to put in various provisions (obviously each state might be slightly different), how can we prevent the courts from diminishing the power of any green amendment like what happened in Pennsylvania back in the 1970s? Any thoughts on that?

Maya van Rossum: Ultimately, a court's decision is in the hands of the justices. Unfortunately, as an attorney, what I see all too often is that justices are just as guilty as too many other people in positions of leadership. Sometimes, they have a desired outcome and they sort of manufacture their words of wisdom to get to that outcome.

It is very possible that we will have some bad precedents in some states. We've seen that with Pennsylvania's green amendment. We've seen that in the civil rights movement with the Thirteenth, Fourteenth, and Fifteenth Amendments. In the beginning, there were such bad rulings, but because the language was in the Constitution, there was always the opportunity for communities and smart lawyers to come back and turn things around and force the courts to get it right. I think that's one really important lesson.

With our modern Green Amendment Movement, we reduce the risk of that happening. By having the green amendment conversation and activism happening in state after state after state, already 13 states have proceeded after just a few years, and people are talking about it and talking with me about how to achieve it at the federal level. We are really raising the level of the conversation. We are making very clear what the people are trying to accomplish with the constitutional green amendment.

We are making sure that legislators are putting into the legislative history the language that can be used by lawyers when they have to go to court to make sure that that bad precedent is avoided. Because we're learning from the experiences in Pennsylvania and Montana. We're learning from the experiences in the Civil Rights Movement.

I think we're doing two things. We're ensuring the legal foundation through the legislative process to make sure that the language is on the record, and to help lawyers ensure that the judges don't get it wrong and can't get it wrong, and that it's harder for them to get it wrong. We

do have some really good solid precedents in Pennsylvania and Montana that lawyers and judges can pull from to ensure the proper outcomes in litigation in those states and other states.

But again, we are also changing the dynamics of the public dialogue and awareness around constitutional environmental rights. So, it's going to be harder for judges and justices to go against the tide of public policy, public perception, and public desires.

And then, by bringing this idea of constitutional green amendments and bill of rights recognition and protection for the rights of all people to a clean and healthy environment, we are also actually bringing that conversation into the political process.

My hope and my goal is that any time anybody anywhere is running for political office in any state or at the federal level—whether they're running to get into office for the first time or they're running to be reelected—they are going to be asked their position on the right of current and future generations to clean water and clean air versus the goals of industry to use our water, air, and natural resources for their private profits.

Politicians are going to be forced on the point to answer that question in really meaningful ways. And the end result is that we are going to get people elected to office more and more frequently that appreciate and respect the rights of all people to a clean and healthy environment. We're going to get people elected to office who are properly minded at the political level and, in some states, like Pennsylvania, at the judicial level. So, when you combine all of that, I think there's a much lesser chance that we're going to end up with the bad precedents.

But I do recognize that it is a possibility and at that point, we just have to turn to history. When the judges get it wrong, people have to keep battling back until they get it right. We do that in every other movement, whether you're talking about the right to marry, the right to vote, civil rights, or the right to bear arms. Any time anybody believes that the judges get it wrong in a judicial decision and they feel that their constitutional right has been violated, they don't sit down and shut up. They rise up again more powerfully until they get the right precedent.

Antoinette Sedillo Lopez: Building on what Maya said, the passage of a green amendment is such a huge statement of political will because it is from the people. It gets voted on by the voters in the state, and politicians will look at that. So, one of the things I'm anticipating is that everybody's going to see that environmental protection is crucial to the people of the state of New Mexico.

Second, I talked a little bit about the *Sanders-Reed* case earlier. What happened in this case that is so disturbing is that Gov. Bill Richardson's administration had passed regulations addressing climate change, but the new governor, Susana Martinez, and her administration came in and summarily reversed them. There was an attempt to use Article XX, §21 to argue that at least there should be some process to ensure public input before a new administration can reverse such important environmental rulemak-

ing. The Court of Appeals did not use Article XX, §21, our “pollution” amendment, to protect the environment.

Our version of the green amendment is written specifically to reverse that result. So, a future court is going to have a hard time doing anything but finding that this amendment is a direct attempt to reverse the results in that particular case. I’m guessing that the same is true in other states. Those are just two points I offer in addition to what Maya said.

Samuel Brown: Related to this conversation, we’ve gotten a couple of questions about how to get something like this passed. I’m assuming it’s a bit different state by state. And, Maya, this is where I want to circle back to your road trip and going to different states.

What I heard today is part of your perspective on why a green amendment is needed, in part because of the perceived failure of state legislatures. But our state legislatures needed our state laws passed in order to get this on the state ballot. There are questions on some of the practical hurdles. One question is, how could one pass a green amendment, practically speaking? In Colorado, for example, a green amendment would meet a political tidal wave of opposition from water, home-building, and extractive industries.

Maya van Rossum: First off, the constitutional amendment processes in all states are similar but different. In New Mexico, one of the pathways is through legislation. You need a majority vote once in each of the legislative houses, and then it can go before the people. In other states, like New York, if you go the legislative approach, it has to get voted on by the legislature twice through two consecutive legislative sessions. In some states, it’s two-thirds vote by each of the houses. In others, it’s three-quarters.

So, when you go the legislative approach, it’s similar but different. You have different hurdles. A number of states do have constitutional conventions. That’s not seen as a very savory path to go down because if you do a constitutional convention to try to get an environmental rights amendment, you’re literally opening up the whole shebang. Often, people don’t want to do that because there are things in their constitutions that they appreciate and don’t want open to attack. Then, of course, there’s a ballot initiative in other states. There are a lot of different pathways.

So far, in all the 13 states where we’re working, what we have found is that the most accessible approach is to go with this legislative path. You can work from either end or both ends. Perhaps you have a legislative champion who wants to put forth good language that you rally people around. Perhaps it starts with the people who we work together with to develop the language and then try to find the legislative champions. Then you rally people around that. Sometimes, both scenarios happen at the same time, which is what’s happening in New Mexico. The reality is, practically speaking, it’s different in every state. It depends on the process in that state. It depends on the personalities in that state.

When I speak in a state, it really depends on who’s getting in touch and wants to do it. In every single state, it

has happened because of a different door opening. In some states, it was a legislator who heard me speak and wanted to reach out. In some states, it was just a single person. Like in New Mexico where there was one person, Mike Neas, who heard me on a podcast and called. In other states, it’s organizations that get in touch.

But there’s always somebody who wants to get the ball rolling in that state. Then I, with my Green Amendments for the Generations organization, start to work with them and find the right pathway for that state. Part of that pathway development is thinking about the language and what is the right language for that state. Because we want to make sure that we have that upfront and early, so everybody is rallying around that. It’s not just a free-for-all with all this different language coming forward. That’s one of the reasons why I encourage people to partner up.

We’ve had a couple of times where there was somebody in a state that tried to go it alone. Unfortunately, the whole movement got derailed because they got talked out of doing the right kind of language, the right kind of placement. They succumbed to bad messaging that got them to roll over on some important political strategy. Or in some cases, they really did get the language wrong and it was advancing. I felt the need to oppose that bad language in order to leave the landscape clear for a true green amendment that would have made a difference rather than letting a fake green amendment advance that wouldn’t have changed anything.

So, the best I can say is that every state has its own personality. Every state has its own process. But my goal in my Green Amendments for the Generations organization is to make sure that I’m working with you to make sure it happens the right way for your state.

Artemisio Romero y Carver: In terms of the legal facets, I want to mention what I found to be practically useful for building the political will to get it passed.

In New Mexico, even if you’re just running through the Democratic Party, it is very hard to not be bankrolled on some level by oil and gas funds. The oil and gas lobby is a very powerful part of our electoral process. They are not generally friendly to the idea of a green amendment, at least not in this moment. It’s not an unheard of situation, a state government in the United States being slightly influenced by corporate lobbyists. And if you want to pass something through, how do you do that?

I’m very young and so I’m inexperienced in terms of lobbying. But the advice that I’ve been given by people who lobbied much longer than me is that politicians care primarily about reelection. I don’t think that’s universally true. I think it’s a relatively cynical position. But there are a number of politicians to whom that is I think applicable and a lot of other people who are often going to stand up for oil and gas.

From that position, the way to challenge oil and gas lobbying power is to have the majority of the constituency in the state support the amendment. Or at the very least, have the majority of the constituency in key electoral spaces support the amendment.

The other way to do that is by building a strong multicultural grassroots coalition ahead of pushing legislation. Trying to get together a community like what Maya was mentioning. Through this green amendment work, we've been able to bridge a lot of different spaces. I've had the chance to work with genuine heroes, like the senator and Terry. I guess, as a younger person, there's also been people that I can bring into the space. We've gotten leadership that reaches out to a lot of different members of the community in New Mexico and, in that way, can start to motivate and organize a broad level of constituency. Coalition-building work is very vital in terms of the political potential of trying to pass legislation like the green amendment.

Maya van Rossum: I think Arte makes such an important point. That is why I emphasize so much this idea of partnership. No one group or entity is going to go it alone. I have a body of knowledge and experience to bring to this effort. Arte has a body of knowledge and experience to bring to this effort. Terry, the senator, and you, Sam, as well, right? We all have something to bring to developing the right way to build a coalition or the right message in a given state to make this happen.

Now, even in states where the political landscape seems like it should be easier for advancement of constitutional environmental rights of this caliber, a green amendment, it's not just constitutional environmental rights. But a green amendment does have that special set of elements that are in the definition that must be achieved.

But nowhere is it easy to get a constitutional amendment. It takes work, grassroots organizing, and people working together while making sure that nobody is willing to sell out everybody else because they want to do some political shoulder-rubbing, which happens a lot in environmental activism.

When we can bring everybody to the table to work collaboratively, and when we can get everybody on board with the concept of wanting a true green amendment, then we can get the ball rolling. It doesn't necessarily mean it's going to happen the first time around. It certainly hasn't happened the first time around in New Mexico, but maybe the second time around. We don't expect passage at the first effort, but we do expect passage in the near term because there is so much power and passion behind the wisdom of this approach. We recognize that reality. We just dig in and we do the hard work together. That's what we do, bringing everybody to the table.

Samuel Brown: Shifting gears a bit, I got a couple of questions related to this in terms of comparing the status in the United States versus globally. This is something that I've worked on in the past, looking at other nations' constitutions and other types of visions with these types of provisions. Many countries have constitutions that include environmental rights to a clean environment. Do you find that other countries' constitutional provisions are meaningful? Should this movement look to what's going on globally?

Maya van Rossum: Certainly, there are powerful lessons to be learned looking at constitutional language in other countries, just like there are powerful lessons to be learned for other countries by looking at what's happening here in the United States. In Chile, they're doing a new constitution. Some folks have reached out to me and I've shared with them our wisdom about the green amendment.

I think that there is value in looking at the language and what is happening, but we also have to recognize that U.S. constitutional law is different than international law. It's different than the way law operates in each different country. So while I think that there is value in looking at the language and the experiences in other countries, fundamentally, when it comes to this Green Amendment Movement, we really have what we need here within the United States.

I'm looking at the successes that are happening in Arab nations in terms of constitutional law generally and green amendments specifically, in terms of language, interpretation, enforcement, and the grassroots organizing to make it happen. I would never say don't look at the good work that is happening elsewhere. But I do feel that for what's happening in New Mexico, we can look to Pennsylvania, Montana, and our other ongoing work and successes to inform that effort.

Terry Sloan: We can also look at those countries that are heavily involved. There were a lot of countries that signed on to the Paris Agreement. In looking at climate change and other environmental issues, France, Germany, Ireland, and Sweden are countries that are working hard to develop environmental legislation to protect their land, air, and water. They may not be specifically what we're looking at here with the green amendment, but they're following that same principle. That's why I think, as we develop the green amendment here in the United States, that it could go global.

One thing I want to do when the time comes is present the green amendment at the United Nations—talking initially with the indigenous peoples but even present to the General Assembly base. When we look at these various movements—and I'll throw in Greta Thunberg and her work—we can look at how all these other countries have done their own legislation and how they progressed and what that looks like. We can learn from that.

I've talked with Maya about getting a green amendment started here in the United States because we have a great chance right now to jump ahead, with Deb Haaland as our Secretary of the Interior, who is very environmental-justice conscious and native-indigenous conscious, of course. As we begin this movement and as it gets momentum, we can begin to look at that process. I think, too, with having President Biden in office, we have a better chance at this point to do that.

One thing I wanted to point out on our state level that we've learned in this process is that while developing those grassroots organizations or whatnot that Arte talked about, you have to customize your target and your strategy to the

groups that are in your way. The question previously was about contractors, and oil and gas companies that will oppose it. While we're working on or strategizing how we would talk to those groups, what language would we say to them? How does the green amendment affect those groups? Then, we need to discuss those issues and then target those legislators that may be in our way and that are deflecting or inhibiting the process.

We had a great chance to get the green amendment done this year, but we ran into one opposition group—the Judiciary Committee. They didn't want to hear it, so it was stopped at that level. So, you find out a way to get around that process. Make sure your state's process allows for all legislation to be heard. That's something that the state is now looking at and changing that process, I believe, where now anything will be heard and have its day in court or in the state legislature.

Samuel Brown: Thank you, Terry. A couple of times, we've danced around the issue that each state is different, each process is different, each amendment is different. For example, we could compare the texts in Pennsylvania and Montana and New York. New York's is very simple. I think it's the shortest of any of them: Each person shall have a right to clean air, and water, and a healthful environment.

My question to the panel is, do you all have a model? The reason I'm raising this is because I looked at the Washington State legislation and they explicitly name a right to a stable climate. The senator included that the New Mexico version mentions culture. So there are slight variations in the different states. How important do you think it is, moving forward, to explicitly have something like climate, which is missing from New York's version? Is that substantive? Is that something that maybe is not ideal? What's your perspective of what should be included in this type of provision?

Maya van Rossum: I have actually worked on the language in every single state and had a hand in all of their differences. Like the identification of the cultural language, the healthful language, which is about the human health focus in a number of states. In Washington State, adding specific language about environmental justice, an additional element that they wanted to have. Having climate in some, not in others. Having flora and fauna in some, not in others. Mentioning flora here, but not flora there. Yes fauna here, but no fauna there. That is because states are different and they have different priorities.

But the way we've come to that language in each of these different states is, first, I try to make very clear to people in my talks that there are these basic fundamentals. These must-haves. Then, there are all these additional elements that are really valuable—the generational language, the trust/trustee language. The mentioning of climate is very valuable if that is a focus.

So, there are different elements and then what we do is work together with our legislative champions and our community members. In every state, it's happened differently to try to figure out what is right for that state—both the

right language in terms of the actual implementation but also being mindful of getting successful passage.

I'm often asked about rights of nature. I've had that conversation multiple times in multiple states, for example. I have very distinct thoughts on that. There are ideal elements to a green amendment. There are words and terms. I think some are greater-than, some are lesser-than. I go into a state with model language and then we sit down and have a conversation again and figure out what is right.

The generational language—that is not in every state—brings an incredible level of legal strength, but also strength in terms of support from indigenous communities and from the youth. I think that the climate language is incredibly valuable for the clarity it brings. Again, it brings in support from a lot of key groups.

On the other hand, you won't see climate in Pennsylvania's language, for example. But there are some really powerful writings, including from Prof. John Dernbach and from Senator Kury and from myself, that talk about how Pennsylvania's language, with its focus on the water and the air and the healthy environment, allows you to get to the climate issue even though it's not specifically mentioned.

The self-executing nature of a green amendment is unsacrificeable. But in Hawaii where we have a green amendment going forth, and in New Mexico for example, that self-executing interpretation comes from the placement and the existing interpretation of constitutional law in that state.

On the other hand, I encourage that the self-executing nature of the amendment gets specifically mentioned in the language in order to fend off the attack that we know will come. The attack that the language should not be interpreted as self-executing, and setting that bad precedent because we have that judge or justice that wants the wrong outcome and will interpret it the wrong way regardless of existing laws.

What I can tell you is there are a lot of really important models. There are a lot of essential elements. I always start the conversation by bringing that language and, at this point, sharing our examples in the other states. Every time we have a change in a state like New Mexico, which was the first state to talk about the cultural values of the environment, that becomes part of my model.

There are a number of states where there have been different elements added, like the "healthful qualities of the environment" part of the model, because of the human health focus. Then, we just build. That's another reason why I say partner up. Because I have a lot to bring and to share with you about what is succeeding in other states, why they're doing what they're doing, and why we did what we did to help build the strongest language for your state. Like the trust language.

Antoinette Sedillo Lopez: I'll add that we felt the trust language in New Mexico was important if we wanted to specifically reverse the outcome of the *Sanders-Reed* case. So I think that in each state, you need to look at the precedent in your state for what the courts have been talking about. Be cognizant of that as you develop the language in

your amendment. Our two big changes from the model were (1) trustee language, because we needed it to reverse the outcome; and (2) cultural relationship to the environment, because of the rich culture we have in New Mexico.

Maya van Rossum: The trustee language actually exists in Pennsylvania, which is why it is in the model. In Pennsylvania, when we overturned the precedent, there were a lot of really great judicial interpretations around the importance and value of having the state as the trustee of the natural resources for the benefit of the people.

Using traditional concepts of trust law—not the public trust doctrine per se, but trust law—in that environmental context is irreplaceably important and valuable for things like environmental justice protection, and how the amendment is actually interpreted and applied. That all gets brought into these early discussions. But there are a lot of things that you accomplish with the trust language that you can also accomplish in other ways. Maybe not as elegantly, maybe not as powerfully, but you can do it. So, that's why I say let's work together and make it happen.