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Green Amendments Will Empower Environmental Protection

By Maya K van Rossum

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Raising environmental rights to the highest constitutional standing at the state and federal level is critical to ensuring essential environmental protections and justice, argues Maya K. van Rossum, of the Green Amendment for the Generations Movement. As recent US Supreme Court opinions have made clear, these rights must be made explicit, because vague statutes risk being overturned, she explains.

The US Supreme Court in *West Virginia v. EPA* rejected [nearly 40 years of precedent](#) requiring that courts give deference to the expertise and authority of a regulatory agency entrusted by Congress with implementing a law.

Instead, the Supreme Court took great pains to undermine the authority of the Environmental Protection Agency and its effort to advance common sense regulations that could limit health-harming, climate-changing emissions from existing power plant operations.

In so doing, the court has most certainly sentenced communities across our nation and future generations to the growing devastation of unchecked environmental degradation and climate devastation; including the deadly wildfires, heat waves, floods, drought, human health harms, and severe economic losses wrought by a growing climate crisis.

For many, the *West Virginia* ruling brought into sharp focus a fundamental failing of our legal system when it comes to protecting the environment.

Without constitutional framing, grounding, and oversight, environmental protection and justice are easily undermined by the vagaries of a political system where the desire for political power, misplaced ideologies, and/or simple greed routinely overwhelm the greater public good; where society ultimately has no meaningful check on the misuse of legislative or executive authority other than protest or the next election; and where an activist court can freely deny even the most basic of needed protections—like the ability to drink clean water, breathe healthy air, and to enjoy a livable climate.

In this system of laws and governance, where business interests have greater access to power and political leverage than people, we have become a nation focused on legalizing pollution and degradation through environmental reviews and permitting. Federal laws such as the Clean Water Act, Clean Air Act, Endangered Species Act, and their state counterparts do not prohibit environmental harm, they simply require the appropriate agency reviews and/or approvals that will oversee and manage it

And in the very act of purporting to regulate, rather than preventing harm, this system has created a presumption—even an expectation—that it is a right of business and government to pollute and degrade our environment regardless of the destructive health, safety, and economic impacts.

In addition, accidental and intentional loopholes allow dangerous industrial operations and chemical use to advance with devastating consequences for people's well-being and our environment. It is the failure to legislate or regulate the use of per- and polyfluoroalkyl substances that has allowed this man-made family of cancer-causing chemicals to contaminate the drinking water supplies of an estimated [200 million](#) people nationwide.

And when implemented, this system, like so many aspects of our society, inequitably impacts Communities of Color, Indigenous communities and low income communities.

SCOTUS Decisions Underpin a Green Amendment Lesson

The same Supreme Court asserted that the failure of the US Constitution to specifically mention and enumerate the right of women to bodily autonomy, including abortion, meant it didn't exist. The court then stripped away 50 years of precedent and protection for the right of women, as well as impacted transgender and non-binary people, to control their own bodies and lives in [*Dobbs v. Jackson Women's Health Organization*](#).

By contrast, explicit recognition of the right to bear arms was used by this same court in [*New York State Rifle & Pistol Assn v. Bruen*](#) to strike down common sense gun regulation essential for protecting kids in school, families at the grocers, and people celebrating at a parade.

To Be Protected, Rights Must Be Explicit

In these cases, there is a lesson to be learned. To transform our current system and ensure essential environmental protection, environmental justice, and a safe future for all the generations who will inherit the earth, we need to raise up environmental rights to the highest constitutional standing at both the state and federal level.

To accomplish this—the Supreme Court was very clear in the *Dobbs* decision, just as state-level courts have been clear when interpreting state constitutional language regarding the environment—the rights you seek to protect must be explicitly stated with clear and plain language. A court opinion that infers the existence of environmental rights through interpretation of vague constitutional language risks being overruled, just as the *Roe* decision was overruled in *Dobbs*.

When it comes to environmental rights, the language and its constitutional placement must leave no room for doubt that these are self-executing, enforceable rights that belong to the people; and are not confined to the limited protections legislators may choose to provide.

Anything less will leave our environment at the mercy of politics and the courts. Green amendments, with their bill of rights placement and clear language protecting the rights of all people to clean water and air, a stable climate and healthy environments, are what we need.

The Green Amendment Time Has Come

Green amendments provide an explicit and unmistakable mandate to protect environmental rights with the same legal vigor, guided by the same constitutional mandates, given our most highly regarded fundamental rights and freedoms, such as free speech, freedom of religion, property rights, and gun rights. The clarity of instruction provided by green amendments leaves little room for anti-environment activism in any branch of government.

Three states already provide this highest green amendment protection for environmental rights and natural resources: Pennsylvania, Montana, and, as of 2021, New York.

At this moment, constitutional green amendments that protect the rights of all people to a clean, safe, and healthy environment, are advancing in states across our nation. Among the states with

active green amendment campaigns are Delaware, Hawaii, Maine, New Mexico, New Jersey, and Washington.

This growing green amendment movement is changing the nature and foundation of environmental protection from a power of politicians to a right of the people.

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