

PROPOSAL: GREEN CONSTITUTIONAL AMENDMENT FOR NEBRASKA

Creating an actionable individual state constitutional right to a clean and healthy environment to support environmental protection, conservation, and justice in the state of Nebraska

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INTRODUCTION

Environmental and climate litigation at the federal level has met with lots of roadblocks, especially due to issues of standing which make it increasingly difficult to bring a federal suit. Often, because negative environmental actions have broad and collective effects it can be difficult or impossible to achieve standing under the individualized harm and imminency requirements.¹ An environmental rights amendment to the Constitution could make it easier for cases at the federal level to gain standing by creating an actionable individual right, however it is highly unlikely that Congress manages to pass such legislation with the required majority and state ratifications. As a result, environmental legal activism has turned to states as potential battlegrounds for climate and environment related lawsuits.

States and municipalities are often on the front edge of environmental law and policy due to their ability to experiment more with localized approaches, have greater judicial capacity, and many have laws and regulations which enable environmental lawsuits.² The presence of environmental rights amendments (“ERAs”) in state constitutions has enabled litigation in instances where a suit would otherwise be non-justiciable and, in states with Green Amendments, litigation has been a promising avenue for environmental action.³ In less

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¹ Marisa Martin & James Landman, *Standing: Who Can Sue to Protect the Environment?*, Vol. 19.1 ABA Publications (Oct. 9, 2020), https://www.americanbar.org/groups/public_education/publications/insights-on-law-and-society/volume-19/insights-vol--19---issue-1/standing--who-can-sue-to-protect-the-environment-/.

² Elissa Torres-Soto, *2022 in Review: State Environmental Justice Laws and Policies*, Environmental Law Institute (Jan. 9, 2023), <https://www.eli.org/vibrant-environment-blog/2022-review-state-environmental-justice-laws-and-policies>.

³ *Hawaii State Judiciary Launches New Environmental Court*, Hawai'i State Judiciary (Press Release Jun. 29, 2015), https://www.courts.state.hi.us/news_and_reports/press_releases/2015/06/environmental_court_launches; Merideth Wright, *The Vermont Environmental Court*, Journal of Court Innovation (Last Accessed May 7, 2024),

environmentally friendly states, a Green Amendment could help influence both legislative and judicial actions to better protect environmental rights. At the same time, working to create state level constitutional change supports a larger movement for federal change.

While passing state constitutional amendments is undeniably difficult, it is still substantially more achievable than passing federal Constitutional amendments. Even in states with more conservative governments (which are more likely to be hostile to environmental suits), including Nebraska, progressive ballot initiatives have been able to find success.⁴ In Part I, this proposal outlines what a Green Amendment is, as well as the importance and potential benefit of such a provision for Nebraska. Part I also explores the different viewpoints and motivations of key stakeholders in the state and its environment, including potential sources of political support and opposition.

Part II of this proposal presents potential language for a Green Amendment, taking into account constitutional requirements and their potential for political weaponization. Part II then goes on to outline a plan for implementation, including a broad overview of the constitutional amendment and ballot initiative process which will need to be further developed into a true strategic plan following conversations with relevant parties. Part II finally offers a few potential senators to act as introducers of the amendment and potential supporters and spearheads of the movement. These parties will be essential to the development of a more specific timeline and

https://law.pace.edu/sites/default/files/IJIEA/jciWright_The%20Vermont%20Environmental_%20Courtfinal%20_cropped.pdf .

⁴ Monica Potts, *Why Republican Voters Support Ballot Initiatives Their Red States Do Not*, FIVETHIRTYEIGHT (Aug. 30, 2022), <https://fivethirtyeight.com/features/why-republican-voters-support-ballot-initiatives-their-red-states-do-not/>; Dylan Scott, *What wins for Medicaid and the minimum wage mean for the future of ballot initiatives*, VOX (Nov. 9, 2022), <https://www.vox.com/policy-and-politics/23435259/2022-election-results-ballot-initiatives-arizona-south-dakota>.

political strategy which, as indicated by Part II of this paper, should draw on the expertise and successful strategies of previous progressive ballot initiatives in Nebraska.

PART I: GREEN AMENDMENT FOR NEBRASKA

WHAT IS A GREEN AMENDMENT?

Green Amendments are constitutional provisions which guarantee a right to a clean and healthy environment.⁵ Many states have general environmental rights amendments (“ERAs”) but, because these provisions are not necessarily substantive or individually actionable, there are limits to how helpful they can be in environmental litigation.⁶ Over three-fourths of U.S. state constitutions have some sort of environmental provision,⁷ including Nebraska,⁸ however only three states have true “Green Amendments” as that term is defined - Pennsylvania, Montana, and New York.⁹ While Green Amendments are a type of ERA, not all ERAs rise to the level of protection provided by a Green Amendment. Although ERAs can be useful in supporting environmental litigation, many are not self-executing, can be easily overrode by other rights, especially those protected at the higher Bill of Rights level, and often function as government directives rather than creating enforceable and actionable individual rights. In short, Green

⁵ M.K. van Rossum, *The Green Amendment, The People’s Fight For a Healthy Environment*, Disruption Books, 2017, *About Green Amendments For the Generations*, GREEN AMENDMENTS FOR THE GENERATIONS (Last Accessed Apr. 17, 20224), <https://forthegenerations.org/about-us/>; Kate Burgess, *Green Amendments*, NAT’L CAUCUS OF ENV’T LEGISLATORS (Last Accessed Apr. 17, 2024), <https://www.nceleviro.org/issue/green-amendment/>; Kara Holsopple, *The Movement to Add an Environmental Rights Amendment to Every State’s Constitution*, The Allegheny Front (Jul. 21., 2023), <https://www.alleghenyfront.org/the-movement-to-add-an-environmental-rights-amendment-to-every-states-constitution/>.

⁶*Id.*

⁷ Lael K Weis, *Environmental constitutionalism: Aspiration or transformation?*, Vol. 16, Iss. 3, 836 INT’L JOURNAL OF CONST. L., 862 (Nov. 9, 2018), <https://doi.org/10.1093/icon/moy063>.

⁸ Art. XV-4 and XV-5 create some right to water but one which is subject to exceptions created by other provisions and one which is not actionable on an individual basis. Neb. Const. art. XIV, sec. 5 (1920).

⁹ M. K. VAN ROSSUM, *THE GREEN AMENDMENT, THE PEOPLE’S FIGHT FOR A CLEAN, SAFE & HEALTHY ENVIRONMENT*, DISRUPTION BOOKS, 2021.

Amendments provide the highest possible level of environmental protection of existing ERA options.

In order to constitute a true Green Amendment and offer the most effective venue for environmental litigation, proposed language must meet some basic requirements.¹⁰

- 1) The amendment must be located in the Bill of Rights or Declaration of Rights of the State Constitution.¹¹ This placement enshrines the rights at the highest protection level possible, preventing other constitutionally protected rights like property from automatically superseding in case of conflict.¹²
- 2) The enumerated rights must be both individual and collective, ensuring the equitable protection of all people, regardless of race, ethnicity, or income. Specific environmental justice language may be included to further support equitable protection.¹³ Language also must specifically outline these rights as belonging to both current and future generations.¹⁴
- 3) The amendment needs to be self-executing, meaning it doesn't require additional legislative action to take effect, and should enumerate rights for both present and future generations.¹⁵
- 4) The language of the amendment should mention specific environmental values to be protected, such as clean water, fresh air, or climate.¹⁶ The inclusion of both broad values and specific enumerations helps make sure that the plain language of the amendment can

¹⁰ *Green Amendment: Check List, Model Language, & Guide*, GREEN AMENDMENTS FOR THE GENERATIONS (Last Accessed Apr. 15, 2024) [hereinafter *Green Amendment Checklist*].

¹¹ *Id.* at 2-4.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

be interpreted and applied by the courts.¹⁷ The importance of climate-specific language was demonstrated in *Held v Montana* where the plaintiffs had to first convince the court that the environmental amendment of Montana’s state constitution included climate protection.¹⁸ Including such language means one less issue of which to convince a court.

- 5) Language should create an obligation on the part of the government with responsibilities that apply to all branches and levels of government.¹⁹ The word “trustee” can specifically solidify the relationship between the government and the people, as well as establishing enforceable responsibilities.²⁰ Trustee language implicates well-understood duties and avoids making the government a proprietor of the environment.²¹ These public trust duties should be broadly defined to include natural resources and environmental values, not simply public lands or government-owned resources.²² Additionally, this trustee language supports the multi-generational nature of these rights.
- 6) Language should necessitate proactive analysis of actions and decisions to stop their infringement on environmental rights in advance. The inclusion of both affirmative and prohibitory duties is important to ensure that both action and non-action on the part of the government are grounds for litigation.²³

¹⁷ *Id.*

¹⁸ *Held v. Montana*, No. CDV-2020-307 (Mont. 1st Dist. Ct.) (14 Aug. 2023), 2023 WL 1997864 https://climatecasechart.com/wp-content/uploads/case-documents/2023/20230814_docket-CDV-2020-307_order.pdf.

¹⁹ *Green Amendment Checklist*, supra note 6, at 2-4.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

Green Amendments which meet these requirements have been successfully implemented in three states - Montana, Pennsylvania, and New York.²⁴ Other states, like Hawai'i for instance, have general environmental rights amendments but do not go so far as to have a true Green Amendment.²⁵

EXISTING GREEN AMENDMENTS

Pennsylvania was the first state to create a Green Amendment, ratifying the amendment in 1971 through the legislative process and the inspiration for the creation of the Green Amendment concept.²⁶ Article I, Section 27 of the Pennsylvania Constitution states:

“The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment. Pennsylvania’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.”²⁷

Like Pennsylvania, Montana’s Green Amendment has been on the books for more than 50 years, added to the state’s constitution in 1972.²⁸ The amendment was added via constitutional

²⁴ M. K. van Rossum, *How Green Amendments Protect Key Environmental Rights*, LAW 360, Nov 23, 2021. <https://forthegenerations.org/wp-content/uploads/Law360-Digital-License-Version.How-Green-Amendments-Protect-Key-Environmental-Rights-1.pdf>;

²⁵ *Held v. Montana Victory*, GREEN AMENDMENTS FOR THE GENERATIONS (Last Accessed May 7, 2024), <https://forthegenerations.org/held-v-montana-victory/>.

²⁶ *Pennsylvania’s Green Amendment for the Generations*, DELAWARE RIVERKEEPER NETWORK (Last Accessed May 7, 2024) [hereinafter PA GA DRN], <https://www.delawareriverkeeper.org/ongoing-issues/pennsylvanias-green-amendment-generations>; Franklin L. Kury, *Pennsylvania’s Environmental Rights Amendment*, CONSERVATION ADVOCATE: PENNSYLVANIA LAND TRUST ASSOCIATION (Last Accessed May 7, 2024), <https://conservationadvocate.org/pennsylvanias-environmental-rights-amendment/#:~:text=On%20May%2018%2C%201971%2C%20Pennsylvania's,esthetic%20values%20of%20the%20environment.>

²⁷ Penn. Const. art. I, sec. 27 (1971).

²⁸ Maura Mulholland, *Know Your Rights (And the Climate’s): Held v. State of Montana as a Catalyst for Enforcing State-Level Green Amendments*, COLUMBIA UNDERGRADUATE L.R. (Fe. 15, 2024), <https://www.culawreview.org/current-events-2/know-your-rights-and-the-climates-held-v-state-of-montana-as-a-catalyst-for-enforcing-state-level-green->

convention and includes two parts.²⁹ The first part, placed in the Declaration of Rights, established the inalienable right to a clean and healthful environment:

“Section 3, Inalienable Rights. All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life’s basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.”³⁰

The second part supports this language with directives for the state:³¹

“Section 1, Protection and Improvement. (1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations. (2) The legislature shall provide for the administration and enforcement of this duty. (3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.”³²

Finally, the New York Green Amendment was passed by popular vote in 2021.³³ As the most recent Green Amendment,³⁴ New York’s Green Amendment not only offers an example of the power of the amendment in practice, but also offers some insight into the public interest in this

amendments#:~:text=Following%20the%20first%20Earth%20Day,for%20present%20and%20future%20generation s%E2%80%9D.

²⁹ *Active States: Montana*, GREEN AMENDMENTS FOR THE GENERATIONS (Last Accessed May 7, 2024), <https://forthegenerations.org/active-states/montana/>.

³⁰ Mont. Const. Art. II, sec. 3.

³¹ *Active States: Montana*, supra note 29.

³² Mont. Const. Art IX, sec. 1.

³³ PACE University, *Article I Section 19*, NEW YORK’S ENVIRONMENTAL RIGHT REPOSITORY (Last Accessed May 7, 2024), <https://nygreen.pace.edu/>.

³⁴ *Id.*

approach to environmental protection. Located in the state’s Bill of Rights is the following language:

“Environmental rights. Each person shall have a right to clean air and water and a healthful environment.”³⁵

While New York’s provision is not as detailed as other proposals, it has been effective in litigation and does meet the basic criteria and definition of a Green Amendment as described above. However, the lack of explicit enumeration of some aspects of a Green Amendment has led to, like the implied climate rights of Montana’s amendment which had to be proven in *Held v. Montana*, the need to make and address additional arguments and issues in court. For example, the self-executing nature of the amendment was questioned in *Fresh Air for the Eastside, Inc. v. State*.³⁶ Through consideration and application of New York constitutional analysis, the court dismissed this argument and let the suit proceed.³⁷ However in states with less well established precedent for reading constitutional provisions as self-executing,³⁸ this lack of explicitness in the provision’s language could potentially render it wholly or partially inoperable, and therefore an explicit statement regarding “self-executing” can be essential.³⁹

BENEFITS IN LITIGATION AND LEGISLATION

Despite its status as the country with the most pending global warming lawsuits in the world,⁴⁰ *Held v. Montana*, decided in 2023, is the first constitutional climate case to succeed in

³⁵ NY Const. Art1 sec 19.

³⁶ *Fresh Air for the Eastside, Inc. v. State*, No.34429 (U), slip op. 29 (N.Y. Supreme Court, 2022) LEXIS 8394.

³⁷ *Id.*

³⁸ *Id.*

³⁹ M. K. VAN ROSSUM, *THE GREEN AMENDMENT, THE PEOPLE’S FIGHT FOR A CLEAN, SAFE & HEALTHY ENVIRONMENT*, DISRUPTION BOOKS, 2021; Holsopple, *supra* note 3.

⁴⁰ Jennifer Hijazi & Drew Hutchinson, *Montana Climate Ruling Boosts Case for States’ Green Amendments*, BLOOMBERG LAW (Aug. 29, 2023).

the U.S. legal system,⁴¹ demonstrating the importance of states in providing legal avenues to combating climate change. In *Held*, the court struck down as unconstitutional, using the Montana’s Green Amendment, a state law which prohibited government officials from considering climate change impacts of their actions and which enabled the state to expand fossil fuel production and use.⁴² In contrast, states where similar legal claims have been brought, cases have been dismissed early on, typically due to procedural issues including standing, redressability, among others.⁴³ Although Green Amendments may not solve all of these issues, they do require courts to more seriously consider similar cases and offer an avenue for courts to direct legislators and executive branches to take or cease action.

Although it lay dormant for a number of years, the Pennsylvania Green Amendment was successfully used to support arguments in *Robinson Township, Delaware Riverkeeper Network, et. al. v. Commonwealth*, decided in 2013.⁴⁴ In this case, the Pennsylvania Supreme Court found a 2012 amendment to the Pennsylvania Oil and Gas Act to be unconstitutional using the state’s Green Amendment.⁴⁵ The right was further advanced as the case moved through higher courts and in the 2017 case *PEDF v. Commonwealth* which sought to challenge the misappropriation of funds secured from the leasing of public lands for fossil fuel extraction.⁴⁶ Montana’s two-part Green Amendment has also been used in a handful of environmental cases in the state: *MEIC v.*

⁴¹ *Id.*

⁴² *Held v. Montana Victory*, supra note 25.

⁴³ *Id.*; See *Natalie R. v. Utah*, No. 2023002-SC (Mar. 15, 2022), <https://climatecasechart.com/case/natalie-r-v-state/>; *Aji P. v. State of Washington*, No. 99564-8 (Feb. 16, 2018), <https://climatecasechart.com/case/aji-p-v-state-washington/>; *Reynolds v. Florida*, No. 1D20-2036 (Fla. Dist. Ct. App. May 18, 2021), <https://climatecasechart.com/case/reynolds-v-florida/>.

⁴⁴ PA GA DRN, supra note 26.

⁴⁵ *Id.*

⁴⁶ *PA Environmental Defense Foundation v. Commonwealth of Pennsylvania*, No. 65 MAP 2020, J-82-2021 (Supreme Court of PA, Aug. 5, 2022), <https://law.justia.com/cases/pennsylvania/supreme-court/2022/65-map-2020.html>.

Montana DEQ,⁴⁷ *Cape France Enterprises v. Estate of Peed*,⁴⁸ and *Park City Environmental Council & Greater Yellowstone Coalition v. Montana DEA & Lucky Minerals*.⁴⁹ The most recently decided case, *Held v. Montana*, established that the state’s environmental rights provisions do in fact include climate and is a landmark case in U.S. climate law.⁵⁰

Despite not having been in place for very long, the New York Green amendment has been involved in a number of litigation efforts. In the first of these, *Fresh Air for the Eastside v. New York*, the amendment was successfully used to address odors, fugitive emissions, and climate change impacts from the High Acre Landfill.⁵¹ Demonstrating the ways in which a Green Amendment enables the public to enforce their own environmental rights, *Renew 81 For All v. New York State Department of Transportation* led to the granting of a petition filed to annul Interstate 81 approvals on a number of grounds.⁵² The 2022 decision found that, given the imminent construction of the Micron Factory Campus, the government failed to adequately consider environmental impacts including the lack of specific air quality analysis on the existing interstate corridor, a failure to provide water resource impact analysis, and invalid projection surrounding future traffic, among others.⁵³ The Supreme Court of New York, Onondaga County required the government to undergo additional environmental impact analysis and consideration of alternative routes before the construction could begin.⁵⁴ A number of other complaints have been filed in response to construction projects, hazardous waste, mining, and single-use plastics

⁴⁷ *Active States: Montana*, supra note 29.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*; *Held v. Montana* supra note 18.

⁵¹ *New York Green Amendment Cases*, PACE UNIVERSITY SCHOOL OF LAW (Last Accessed May 7, 2024), <https://nygreen.pace.edu/cases/>.

⁵² *Renew 81 for All v. New York State Dep’t Transportation*, Doc. No. 160, Index No. 007925/2022 (Jan. 12, 2023), <https://bpb-us-w2.wpmucdn.com/blogs.pace.edu/dist/1/400/files/2023/03/Decision-and-Order-Requiring-SEIS.pdf>.

⁵³ *Id.* at 23-24.

⁵⁴ *Id.*

with the goal of obligating the state to enforce and properly implement its own environmental regulations.⁵⁵ The State of New York has also used the amendment to initiate a complaint against a PepsiCo plant on the Buffalo River,⁵⁶ demonstrating the variety of potential petitioners who may make use of a Green Amendment. In New York, although a large framework of comprehensive laws, regulations, and policies already existed in the state, including the New York Department of Environmental Conservation (“NYDEC”), the Green Amendment has allowed individuals to take action in enforcing these existing laws.

The Green Amendment has also been able to create a gap-filler where there is an absence of law to address an environmental issue, for instance PFAS Forever Chemicals which have not yet been regulated but are actively contaminating people’s environments, drinking water, and even their own bodies.⁵⁷ For example, a petition in New York was brought to challenge the issuance of a Solid Waste Management Permit on numerous grounds, including the fact that the application failed to address how produced leachate containing PFAS would be managed.⁵⁸ Although the petition was dismissed on the basis of being too speculative to support the direct harm of the petitioners,⁵⁹ it will likely be appealed and still demonstrates the ability of the Amendment to potentially aid in addressing PFAS contamination, even if such a complaint would need to be brought after the fact. The same environmental non-profit organization, Seneca Lake Guardian, is also bringing another PFAS-related suit against New York State’s largest

⁵⁵ *New York Green Amendment Cases*, supra note 51.

⁵⁶ *People of the State of New York v. Pepsico, Inc. et al.*, Complaint No. 814682/2023, Filed Nov. 15, 2023, blogs.pace.edu/dist/1/400/files/2023/12/814682_2023_People_of_the_State_of_v_People_of_the_State_of_COMPLAINT_2.pdf.

⁵⁷ *Id.*

⁵⁸ *Seneca Lake Guardian v. New York State Dep’t of Env’t Conservation*, New York State Supreme Court: County of Tompkins, Index No. EF2022-0533, RJI No. 2022-0458-M (Apr. 19, 2023).

⁵⁹ *Id.*

landfill and the State Department of Environmental Conservation, again arguing violations of the Green Amendment.⁶⁰

In addition to litigation support, Green Amendments have a number of benefits to states at multiple different levels of government and at a variety of points in the lawmaking and implementation process. Constitutional Green Amendments can assist regulatory agencies and municipal officials in interpreting the language of laws in the implementation process. The amendment can also help to push governments to be more proactive in their regulatory actions, preventing future contamination and disasters. Money can be saved for individuals, communities, and the government in the long term by preventing public illness due to pollution, reducing future clean-up costs, and in preventing or alleviating conditions and behaviors which exacerbate natural disasters like floods or wildfire, among other potential avenues.⁶¹ The Green Amendment's broad impact on different levels and branches of government and society is exemplified by the initial successes of Pennsylvania.

As a touchstone for other governmental branches, the state's Green Amendment has been used outside of litigation to support other government branches' environmental protection efforts. In the executive branch, Governor Wolf cited the Green Amendment in his decision to veto a bill that would've curbed the ability of towns and cities to regulate plastic bag use.⁶² Local governments have also relied on the amendment. The Board of Commissioners of Marple Township voted unanimously to reject a proposed residential development plan which would clear 89 acres of woodland, specifically referencing the duty to protect and preserve natural

⁶⁰ *Seneca County Local Businesses, Advocates, and Residents Announce Lawsuit Against Seneca Meadows Inc. and New York State Department of Environmental Conservation*, Seneca Lake Guardian, Press Release (Mar. 25, 2024), <https://senecalakeguardian.org/Advocates-and-Residents-Announce-Lawsuit-Against-Seneca-Meadows>.

⁶¹ Holsopple, *supra* note 5.

⁶² PA GA DRN, *supra* note 26.

resources articulated by the amendment.⁶³ The public has also been able to use the amendment, with a 2019 coalition of organizations and individuals holding a day of action and delivering petitions to remind Pennsylvania legislators of their constitutional duty to protect environmental rights.⁶⁴

ISSUES IN NEBRASKA SUPPORTING A GREEN AMENDMENT CAMPAIGN

In Nebraska, numerous environmental issues are affecting the population statewide, especially as it relates to water quality and prevention of contamination of groundwater. At the same time, the state's conservative government is unlikely to take steps to regulate and often, as evidenced by the Piller pig farm discussion below, does not enforce its existing environmental regulation. Despite the government's laissez-faire approach to environmental protection, there are a number of coalitions which have been organized in the past to support environmental efforts in the state. One of the most notable of these environmental movements was that which blocked the Keystone pipeline in the state, made up of farmers, environmentalists, and native tribe members.⁶⁵ A Green Amendment can capitalize on these pockets of support to enable better statewide environmental protection and support potential climate litigation as climate change driven natural disasters and extreme weather have also taken tolls on the state.

ENVIRONMENTAL CONTEXT OF NEBRASKA AND CURRENT ISSUES

Nebraska is home to seven major aquifer systems with the largest in terms of water volume and most important in terms of irrigation withdrawals being the Ogallala (High Plains)

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ JANE KLEEB, HARVEST THE VOTE: HOW DEMOCRATS CAN WIN AGAIN IN RURAL AMERICA, Jan. 21, 2020.

Aquifer.⁶⁶ In many parts of the state, the natural quality of the groundwater is suitable for both human use and ecosystems, however groundwater quality is incredibly sensitive to pollution.⁶⁷ In some parts of the state, human activities have contributed high levels of nitrate, uranium, and arsenic to the groundwater makeup, drastically reducing the quality, raising drinking water treatment costs, and putting Nebraskan communities at risk of health problems.⁶⁸ Nitrogen is a valuable fertilizer, however its overuse has led to contamination of streams, lakes, and groundwater, costing the state millions of tax dollars in water treatment.⁶⁹ Nearly 1 in 5 public water supplies and private wells in the state consistently test high for nitrate-nitrogen, a chemical which is shown to create high cancer risks, negative birth outcomes, and hazards for infants.⁷⁰ Nebraska has the highest concentration of pediatric cancer rates west of Pennsylvania with elevated nitrate level counties being at especially high risk.⁷¹ Additionally, high nitrate concentrations can significantly contribute to the presence of harmful algal blooms which can lead to beach closures and cause substantial harm to aquatic wildlife.⁷² Nebraskans get 85% of drinking water from groundwater,⁷³ making preservation of its quality especially important.

⁶⁶ UNL Water, *Aquifers of Nebraska*, UNIVERSITY OF NEBRASKA INSTITUTE OF AGRICULTURE AND NATURAL RESOURCES (Last Accessed May 7, 2024), <https://water.unl.edu/article/groundwater/aquifers-nebraska>.

⁶⁷ UNL Water, *Groundwater Quality and Protection*, UNIVERSITY OF NEBRASKA INSTITUTE OF AGRICULTURE AND NATURAL RESOURCES (Last Accessed May 7, 2024), <https://water.unl.edu/article/groundwater/groundwater-quality-and-protection>.

⁶⁸ *Id.*

⁶⁹ Katie Pekarek, *Nitrate in Nebraska*, UNIVERSITY OF NEBRASKA INSTITUTE OF AGRICULTURE AND NATURAL RESOURCES (Last Accessed May 7, 2024), <https://water.unl.edu/category/nitrate>.

⁷⁰ *Id.*

⁷¹ Yanqi Xu, *Pillen's Water: High Nitrate Detected on Hog Farms Owned by Nebraska's Governor*, FLATWATER FREE PRESS (Sep. 7, 2023), <https://flatwaterfreepress.org/pillens-water-high-nitrate-detected-on-hog-farms-owned-by-nebraskas-governor/>; Balkissa S. Ouattara et. al., *Geospatial Distribution of Age-Adjusted Incidence of the Three Major Types of Pediatric Cancers and Waterborne Agrichemicals in Nebraska*, NATIONAL LIBRARY OF MEDICINE (Feb. 2022), <https://pubmed.ncbi.nlm.nih.gov/35372745/>.

⁷² Pekarek, *supra* note 69.

⁷³ Xu, *supra* note 71.

Recently, large amounts of nitrate have been shown to be contaminating Platte Center as a result of industrial pig farming which is connected to elevated nitrate levels in the area.⁷⁴ The town of Lindsay has spent more than \$826,000 on new wells and pipes due to water contamination.⁷⁵ Platte Center has spent roughly half a million dollars and Bellwood is also likely to need to end up spending money on water quality conservation.⁷⁶ Although the hog farms are not necessarily the only sources in this area for pollution, University of Nebraska research indicates that they are the most likely culprit and largest contributor. The water in the Platte Center area is showing nitrate levels higher than what the federal government says is okay to drink and while there are state regulations on nitrate pollution, not all rule violations are being addressed.⁷⁷ The Nebraska Department of Environmental Enforcement has not made any changes to regulations, despite the 11 different points of concern identified by the agency and through public comment.⁷⁸ It could also support the legislature in the passage of laws to address the issue. Despite the availability of federal funding to promote and teach safer farming practices, the state has often not taken advantage of such opportunities, generally due to ideological stances of decision makers.⁷⁹ The passage of a Green Amendment could allow these communities to take action on their own behalf and to sue the state to investigate and address problems, compel stronger regulatory measures, and or enforce existing measures.

STAKEHOLDERS

In order to successfully pass a Green Amendment in the state of Nebraska, it is necessary to understand the complex network of stakeholders and their potential positions and political will

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Xu, *supra* note 71.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

to participate in the movement. The following section outlines general bases of support and opposition and then further outlines and explores a few different sectors of the state which would likely be affected by a Green Amendment, as well as how they may be convinced to support it. A number of groups which may initially appear to be staunchly against any type of environmental action be virtue of political affiliation or polarization, which often leads Nebraskans to default to conservative and Republican party lines, remain potential sources of support if approached in a way which centers their issues of concern. The importance of speaking directly with individuals about their concerns and how a proposed Green Amendment may help can be seen in the successes of other statewide ballot initiatives which also at first blush faced potential automatic opposition along party lines.

The proposed Green Amendment is likely to draw support from Nebraska's conservationists, youth, native tribes, and healthcare professionals due to its environmental protection capabilities and the potential to address health crises in the state caused by pollution, especially forever chemicals. Native tribes also do not have to worry that this Amendment could be used against tribal sovereignty and rather should see the Amendment as an additional pool of potential protection against state government actions. The deliberate protection of cultural values in the language of the amendment is inspired by that of New Mexico which proposed the inclusion of the language specifically to further ensure protection of the values and lifestyles of indigenous peoples. It is also likely that lower-income communities and communities of color would support such an amendment as redlining, among other systemic issues, have often left them in the path of environmental disasters. Given the negative impacts of groundwater pollution especially statewide and the disproportionate effects of said pollution on children and infants, parents should also be in support of this amendment.

Likely opponents of the Green Amendment in Nebraska are going to be primarily focused around the agricultural industry, both animal and traditional crop farming. Fossil fuel companies, waste management companies, land developers, and some state and local government entities are also likely to oppose the Green Amendment. These are all stakeholders who would likely lose money in the short term (or, with hope, permanently in the case of fossil fuels) due to any regulatory changes or litigation which occurs following passage. However, most of these potential opponents are organizational and there is potential that even those involved in these industries or with companies or organizations in this sector may still be convinced to support the amendment. The bigger concern with this industry opposition is the likelihood of their funding opposition campaigns and the institutional support they will likely receive from the conservative state government and well-funded state Republican Party.

AGRICULTURE

Farmers and ranchers are an example of a group where individuals may be convinced to support a Green Amendment, despite opposition from the larger industry as a whole. This is in part due to the differences between small farmers and ranchers and larger industrial farming and animal agriculture. While the former group is often directly affected by the negative impacts of pollution, especially in water and soil, the latter is often the source of such pollutants, as discussed in previous sections. Drawing a distinction between small farmers and industrial agriculture is necessary to tailor a message that inspires the support of at least a portion of the agricultural industry in the state. Emphasizing points about eminent domain protection can also help to garner agricultural support.

Due to the central nature of the state, oil pipelines are often run through, creating another nexus of potential support for a Green Amendment among farmers and ranchers who oppose the

use of eminent domain to build pipelines on their land and fear the negative effects of almost certain spills. Nebraska has a history of using eminent domain to facilitate pipeline projects across the state; this was one of the factors which brought farmers into the diverse anti-Keystone pipeline coalition.⁸⁰ The state has even gone so far as to authorize the use of eminent domain to support acquisition of “property as may be reasonably necessary for the laying, relaying, operation, and maintenance of any such pipeline or the location of any plant or equipment necessary to operate such pipeline...”⁸¹ Perhaps the same issue can help bring farmers into the coalition once again as this amendment could facilitate lawsuits to block eminent domain for oil and other pipelines. The ability of a Green Amendment to prevent the use of eminent domain to coopt farm and ranch land for large, often out-of-state companies is a major selling point.

Farmers are also people and part of communities, many of which have been affected by environmental disasters in the past or are currently affected. For example, the recent pollution from the Pillen Family Pig Farm, which despite its charming name is much more corporate than it sounds, has contaminated or potentially contaminated the groundwater of the surrounding area with nitrate levels well above the federal limit.⁸² No one wants to see their friends, family, or churchmate dealing with the effects of carcinogens. This is especially true when, had the government been diligent enough in creating and implementing existing regulations, they might never have gotten sick in the first place. FAS, as discussed above as being a part of a gap in

⁸⁰ Oliver Laughland & Laurence Mathieu-Leger, *Nebraska to become battleground over fate of Keystone XL pipeline project*, THE GUARDIAN (May 2, 2017), <https://www.theguardian.com/us-news/2017/may/02/keystone-xl-pipeline-nebraska-public-meeting-protests>.

⁸¹ Neb. Revised Statute 57-1101, Acquisition of property by eminent domain; authorized; procedure, (Laws 1963, c. 323, § 1, p. 979; Laws 2011, First Spec. Sess., LB1, § 1; Laws 2012, LB1161, § 1) (Cross Ref. Major Oil Pipeline Siting Act, § 57-1401), <https://nebraskalegislature.gov/laws/statutes.php?statute=57-1101>.

⁸² Xu, *supra* note 71.

environmental law, are also an issue which has negatively impacted farmers⁸³ and could be emphasized as a reason to support the amendment.

Additionally, agriculture, especially small farmers and non-industrial farms are reliant on the good health of the environment, climate, soil, and water for their success. Good harvests cannot happen when water sources are contaminated or overtapped and good animal rearing doesn't happen without healthy and stable grazing land. While agriculture could hypothetically face lawsuits in response to the ecological damage caused by genetic erosion and habitat loss, reasonably responsible farmers and ranchers should not be affected. It is unlikely that the amendment will be used to enforce government action on individuals directly. Should agriculture be impacted, the large industrial agriculture companies would be the most affected as this is the source of much of the water contamination in the state. However, the fact that this amendment could be used against individual farms is an issue which will almost certainly be brought up by opposition groups. Luckily, there is no history of usage of Green Amendments against individual farmers and the pending and proposed cases of Green Amendment states do not show any likelihood of pursuing such suits. As discussed in previous sections, most current and pending litigation relates to waste management, construction, and water contamination – all of which being issues which could and do have substantial negative impacts on farmers.

While there is some possibility of support from small farmers and environmentally conscious segments of the agriculture economy, it is more likely that the agriculture industry will oppose the amendment as a whole. New York, a much more liberal state with less economic dependence on agriculture, saw solid opposition to the bill from the industry. The state's Farm

⁸³ Joel Tallaksen & John Larson, *Forever Chemicals May be a Concern for Agriculture*, UNIVERSITY OF MINNESOTA COLLEGE OF FOOD, AGRICULTURAL AND NATURAL RESOURCE SCIENCES (Mar. 2023), <https://wcroc.cfans.umn.edu/about-us/wcroc-news/forever-chemicals-concerning>.

Bureau argued that the amendment could undermine the strict science-based regulations already in place in the industry.⁸⁴ The state's Republican Party and a number of businesses also denounced the amendment, presumably on ideological and economic grounds.⁸⁵ Given that Nebraska is much more reliant on agriculture as a source of state revenue and a principal economic sector, the opposition of the agricultural industry and likely the Farm Bureau is likely to have a much larger negative effect on the Green Amendment campaign. Reaching out to farmers on an individual basis may help to address some of this opposition, however, campaigners will need to seriously emphasize specific agricultural concerns like water quality and eminent domain in order to win any amount of support from this group. There is hope for some agricultural support given the preeminence of these issues and the previous support of farmers in environmental causes like the Keystone pipeline opposition.⁸⁶ There is also hope on the basis that individuals are multi-faceted and many of the arguments which may entice Nebraskans generally are also likely to find favor among individual farmers and ranchers.

CITIES AND MUNICIPAL GOVERNMENT

Although cities and municipal governments may oppose the proposed Green Amendment on the basis that it could lead to suits against them, as seen in New York, there are also a number of reasons why local governments may be in support of this proposal or at least convinced to refrain from taking a stance. As discussed above, the Green Amendment can act as an enabling legal basis for cities and towns to implement environmental policies and to prevent actions of the State which may infringe upon the goals of a town or city. For example, Omaha attempted to ban

⁸⁴ *Statement: Farm Bureau Urges Voters to Reject 'Green Amendment,'* LIVINGSTON COUNTY NEWS (Oct. 29, 2021), https://www.thelcn.com/voices/letters/statement-farm-bureau-urges-voters-to-reject-green-amendment/article_f4796e4a-cc86-529d-9032-26bfab94a5c7.html.

⁸⁵ Joshua Solomon, *Ballot Proposal 2: A 'Green Amendment' with Capital Region Roots*, TIMES UNION (Oct. 25, 2021), <https://www.timesunion.com/state/article/Ballot-Proposal-2-A-Green-Amendment-with-16556496.php>.

⁸⁶ Laughland & Mattieu-Leger, *supra* note 80.

plastic bags in the city in 2019, with the city council passing the ordinance before mayoral veto.⁸⁷ As a result, the legislature introduced a bill, LB861, in 2020 which would have banned plastic bag bans.⁸⁸ While this bill undermining local control did not pass, one restricting the ability of city and municipal governments to ban natural gas use in buildings did pass in the most recent legislative session.⁸⁹ Legislation which restricts the abilities of cities and local governments to impose their own environmental regulations is increasingly common in the state,⁹⁰ especially as it relates to the actions of Omaha and Lincoln, the two largest cities which also lean more liberal than the state as a whole. A Green Amendment could enable cities and counties in the state to take control of their environmental policies when said policies come in conflict with the state government's aims and restrictions on municipal independence.

GOVERNMENT OF THE STATE OF NEBRASKA

The state government is unlikely to support a Green Amendment. In New York, the hostility to the amendment by the state government is clear in the state's approach to the first cases brought under the new amendment. In *Fresh Air for the Eastside*, the state tried to defang the amendment by denying its self-executing status.⁹¹ There was also concern expressed that this

⁸⁷ Aaron Sanderford, *Omaha's proposed ban on plastic bags at grocery stores could expand to big box stores*, OMAHA WORLD HERALD (Apr. 25, 2019), https://omaha.com/news/local/omaha-s-proposed-ban-on-plastic-bags-at-grocery-stores-could-expand-to-big-box/article_35d5feb0-e74c-544d-bc3b-b842f3aaf52b.html.

⁸⁸ *Proposal to bar cities from banning single-use plastics discussed*, UNICAMERAL UPDATE (Feb. 14, 2020), <https://update.legislature.ne.gov/?p=27494>.

⁸⁹ *Nebraska becomes 26th state to pass fuel choice legislation, securing protections for consumer choice in more than half of America*, AMERICAN GAS ASSOCIATION (News Release Apr. 18, 2024), <https://www.aga.org/news/news-releases/nebraska-becomes-26th-state-to-pass-fuel-choice-legislation-securing-protections-for-consumer-choice-in-more-than-half-of-america/>.

⁹⁰ There was also an attempted ban on mask mandates when both Omaha and Lincoln implemented them and often discussions in the legislature single out both cities for additional regulation at the state level, including proposals for spending caps. Aaron Sanderford, *Largest Nebraska cities and counties push back on proposed spending caps*, NEBRASKA EXAMINER (Feb. 8, 2024), <https://nebraskaexaminer.com/2024/02/08/largest-nebraska-cities-and-counties-push-back-on-proposed-spending-caps/>.

⁹¹ *Fresh Air for the Eastside, Inc.*, slip op.

amendment would open the floodgates to an overwhelming number of lawsuits.⁹² While it is true that this amendment could open more legal avenues, it is more likely to change how the government creates and implements policy on the front end.⁹³ To avoid future lawsuits, regulators will become more proactive, lowering the number of cases. Furthermore, in the three states where this has been passed, there has not been a surge in cases. There have been roughly 3-10 lawsuits a year in the three states where the amendment exists and none of these suits have been dismissed as frivolous.⁹⁴ The suits that are happening are legitimate and exemplify why the Green Amendment is needed. Additionally, as noted above, New York's state government has actually brought suits on behalf of the people using the Green Amendment, indicating that while state governments can also benefit from the amendment.

State governments and businesses have also expressed concern about the economic impact of the amendment if businesses were scared to operate in the state for fear of lawsuit.⁹⁵ Pennsylvania, despite having a Green Amendment which has blocked oil and gas companies in the past, has not ceased to be a center of business for fossil fuels; nor has the amendment negatively impacted farmers in any noted way.⁹⁶ The amendment had not been used substantially in the past to bring suits and most of its impact so far has been in influencing the proactive decisions of regulatory and other government agencies.

ENERGY

⁹² Evan George, *States May be Warming to Green Amendments*, LEGALPLANET: BERKELEY LAW (Mar. 12, 2024), <https://legal-planet.org/2024/03/12/states-may-be-warming-to-green-amendments/>.

⁹³ *Id.*

⁹⁴ Nick Reisman, *Why agriculture advocates worry about environmental amendment*, SPECTRUM NEWS 1, (Oct. 27, 2021), <https://spectrumlocalnews.com/nys/central-ny/ny-state-of-politics/2021/10/27/why-agriculture-advocates-worry-about-environmental-amendment>.

⁹⁵ Solomon, *supra* note 85.

⁹⁶ *Id.*

It is unlikely that the Green Amendment will have any negative impacts on the clean energy industry in the state. In fact, the amendment could be used to prevent state efforts to limit green energy proliferation in the state by allowing for potential challenges to hostile state policy⁹⁷ towards clean energy companies. Utilities which are publicly owned in the state, may also support or at least not oppose the amendment given how a Green Amendment could lend itself to clean energy development.⁹⁸ Polls also show strong support for clean energy among the Nebraska public and the state's largest utilities, Nebraska Public Power District, Omaha Public Power District, and Lincoln Electric System have all staked out net-zero goals for 2050, 2050, and 2040 respectively.⁹⁹ Currently, Nebraska is seventh in percentage of power from wind energy at 24.7% and fourteenth in amount of actual wind power generated.¹⁰⁰ The two largest generators are Texas and Iowa respectively, both of which have in progress Green Amendment projects.¹⁰¹ Not only does wind power support clean energy in the state and create business for energy companies, it also supports 17.6 million dollars in lease payments to landowners and roughly the same amount in local tax dollars.¹⁰² A Green Amendment could support the passage of state and municipal policy which invests in clean energy and supports energy companies in the transition.

Additionally, the Green Amendment could be a catalyst for new business opportunities in the state of Nebraska. For example, Nebraska does not currently have a Green Bank, a typically

⁹⁷ Deborah Van Fleet, *Nebraskans for clean energy, rural development say bill would harm both*, Public News Service (May 7, 2024), <https://www.publicnewsservice.org/2024-03-14/environment/nebraskans-for-clean-energy-rural-development-say-bill-would-harm-both/a89332-1>.

⁹⁸ John Matson, *Reality Check: Red-State Voters Want Clean Energy Too. Just Ask Nebraska*, RMI (Feb. 17, 2022), <https://rmi.org/reality-check-red-state-voters-want-clean-energy-too-just-ask-nebraska/>.

⁹⁹ *Id.*

¹⁰⁰ Paul Hammel, *Senators strike compromise, advance bill requiring extra public meeting on renewable energy projects*, Nebraska Examiner (Apr. 3, 2024), <https://nebraskaexaminer.com/briefs/senators-strike-compromise-advance-bill-requiring-extra-public-meeting-on-renewable-energy-projects/>.

¹⁰¹ *Id.*

¹⁰² *Id.*

state or local government run entity which helps finance green energy projects and environmentally beneficial technologies.¹⁰³ A Green Amendment would not directly support the creation of such banks but could help facilitate larger discussion about creating such an entity in the state. The state's similarly functioning financing entity, the Nebraska Dollar and Energy Savings Loan program,¹⁰⁴ could be influenced and supported by the Amendment to further support green energy in the state and possibly to expand into a full Green Bank.

ECOTOURISM

Another group of potential supporters of a Green Amendment in the state are those who value the environment for its cultural and recreational uses. The state has an important ecotourism industry centered around the massive sandhill crane migration which occurs each spring.¹⁰⁵ The migration peaks in mid-March and brings 80% of the world's sandhill cranes to the Platte River for a long refueling pit stop.¹⁰⁶ As of 2017, the cranes brought 14.3 million dollars to the central part of the state, creating 182 full-time jobs and generating over 350,000 in tax revenue.¹⁰⁷ The state also has an important hunting and fishing industry which also attracts tourism dollars. Nebraska is also home to a diverse slate of hunting including deer, elk, wild turkey, quail, waterfowl, antelope, and a variety of small game and specialty permits.¹⁰⁸ Hunting

¹⁰³ Annie Gilleo et. al, *Green Bank Accounting: Examining the Current Landscape and Tallying Progress on Energy Efficiency*, AMERICAN COUNCIL FOR AN ENERGY-EFFICIENT ECONOMY (Sept. 2016), https://neo.ne.gov/info/pubs/pdf/ACEEE-Green_Bank_Accounting-DollarEnergy_Savings_Loans.pdf.

¹⁰⁴ *Id.*

¹⁰⁵ Sarah Kuta, *Nebraska in a Record-Breaking Start to Spring Migration*, SMITHSONIAN MAGAZINE (Feb. 22, 2024), <https://www.timesunion.com/state/article/Ballot-Proposal-2-A-Green-Amendment-with-16556496.php>.

¹⁰⁶ *Id.*

¹⁰⁷ Sarah Giboney, *UNK Study: Economic impact of Sandhill cranes in central Nebraska is \$14.3M*, University of Nebraska-Kearney News (Jul. 12, 2017), <https://unknews.unk.edu/2017/07/12/unk-study-economic-impact-of-sandhill-cranes-in-central-nebraska-i-14-3m/>.

¹⁰⁸ *Nebraska Game*, NEBRASKA GAME AND PARKS COMMISSION (Last Accessed May 8, 2024), <https://outdoornebraska.gov/hunt/game/#:~:text=Nebraska%20is%20one%20of%20the,diverse%20game%20and%20gorgeous%20landscapes..>

in the state boosts the economy with an annual impact of \$848 million.¹⁰⁹ Hunters and gamesmen have been major supporters of conservation and reintroduction efforts in the state in the past and have been a source of subsidies for scientific and conservation work.¹¹⁰

One of the bigger threats to these outdoor activities is ecosystem pollution and development, both of which are issues which a Green Amendment may help concerned outdoorspeople to protect. The inclusion of cultural values in the specific language of Green Amendments has been used in other state proposals to ensure the protection of outdoor activities like hunting, fishing, and camping among others. In Maine, the Green Amendment bill (also known as the Pine Tree Amendment) has bipartisan co-sponsorship with the Republican sponsor, Rick Bennet, supporting the Amendment in part because of the potential it has to protect Maine fisheries, lobstermen, and hunting in the state.¹¹¹ Given the popularity of hunting and other outdoor activities in the state, this argument has potential to garner at least some support among many Nebraskans and creates another stakeholder group which can be appealed to.

PART II: LANGUAGE AND IMPLEMENTATION

Having previously explained the purpose, history, and benefits of a Green Amendment, as well as how such an amendment would be potentially received and of use to the state of Nebraska specifically, this section goes forward to propose language for a Green Amendment. Part II also details potential legal snags in the constitutional amendment process, outlines a plan

¹⁰⁹ *Learn to Hunt*, NEBRASKA GAME AND PARKS COMMISSION (Last Accessed May 8, 2024), <https://outdoornebraska.gov/hunt/learn-to-hunt/>.

¹¹⁰ Greg Wagner, *Why is Hunting so Important*, NEBRASKALAND (Aug. 30, 2021), <https://magazine.outdoornebraska.gov/2021/08/why-hunting-is-so-important/>.

¹¹¹ Evan Popp, *Bill to create right to healthy environment fails amid attacks by GOP lawmakers*, BEACON (Apr. 6, 2022), <https://mainebeacon.com/bill-to-create-right-to-healthy-environment-in-maine-fails-amid-attacks-by-gop-lawmakers/>; *April 2023 Newsletter*, GREEN AMENDMENTS FOR THE GENERATIONS (Apr. 2023), <https://forthe generations.org/blog/2023/04/27/april-2023-newsletter/>; Meeting with Maya van Rossum (Apr. 29, 2024).

for passage via ballot initiative, and indicates groups and individuals to connect with in order to begin a successful campaign on this issue.

DEVELOPING LANGUAGE FOR NEBRASKA

In order for a Green Amendment to succeed in Nebraska, it must stand up to the requirements of the ballot initiative process discussed in Part II. For the purposes of language specifically, the main consideration is the constitutionally mandated single-issue requirement of ballot initiatives. This is likely to be the biggest *legal* hurdle to the implementation of a Nebraska Green Amendment given that the rule, intended to prevent logrolling,¹¹² has been weaponized against progressive ballot initiatives in the past.

The single subject rule for ballot initiatives was added to the state constitution in 1998, shifting courts away from the use of a three part common law test developed mainly to address municipal ballot initiatives.¹¹³ With the goal of protecting voters from being forced to vote for or against an entire package when they only support or oppose certain parts, the language “Initiative measures shall contain only one subject.” was added to Article III-2.¹¹⁴ In applying this language to ballot initiative proposals, courts use a “natural and necessary connection” test to determine whether language is constitutional.¹¹⁵ Two cases exist applying this test to proposed ballot language, one which upheld the initiative and one which rejected it. *Christensen v. Gale*, decided in 2018, was the first of these two cases, finding that the proposed medicaid expansion ballot initiative complied with the single subject rule.¹¹⁶ In contrast, the second, more recent case, *State*

¹¹² Combining dissimilar propositions into one initiative to vote for or against an entire package, forcing voters to support or oppose portions of the proposal they may not want to.

¹¹³ *State of Nebraska ex rel. v. Robert B. Evnen*, 307 Neb. 142, 151 (Neb. Supreme Ct., Sept. 10, 2020).

¹¹⁴ Neb. Const. art. III, sec. 1A (1912); Adopted 1912, Laws 1911, c. 223, sec. 2, p. 671; Amended 1920, Constitutional Convention, 1919-1920, No. 4; Amended 1988, Laws 1988, LR 248, sec. 1; Amended 1998, Laws 1997, LR 32CA, sec. 1; Amended 2004, Initiative Measure No. 418, sec. 1.

¹¹⁵ *State ex rel. v. Evnen; Christensen v. Gale*, 301 Neb. 19 (Neb. Supreme Ct., Sept. 12, 2018).

¹¹⁶ *Christensen v. Gale*, 301 Neb. 19.

ex rel. Wagner v. Evnen, brought in 2020, found that the proposed medical marijuana amendment violated the single subject rule, relying on the decision of *Christensen* for support.¹¹⁷

As Green Amendment and climate litigation at the state level are still in their infancy, keeping an eye on ongoing lawsuits and other uses of the amendment in the states where it has been implemented could help to better tailor the language of Nebraska's amendment to avoid common snags. Additionally, Green Amendments have been proposed in 16 states: Arizona, California, Connecticut, Colorado, Delaware, Florida, Iowa, Maine, Maryland, Michigan, Nevada, New Jersey, Oregon, Tennessee, Texas, Washington and Wisconsin.¹¹⁸ Hawai'i, which already has a non-Green Amendment environmental rights provision is looking to strengthen its constitutional environmental protections by proposing a Green Amendment for the state constitution to ensure protection of environmental rights.¹¹⁹ The outcomes of these movements could also lead to changes to Nebraska's language and implementation process as we learn from the successes and failures of others.

Florida is another state pursuing a Green Amendment which has a single subject rule; however, the rule is more narrowly applied in that state and the ballot initiative process overall has much stricter rules.¹²⁰ However, Florida does demonstrate an opportunity to pursue a Green Amendment at least in part should a full amendment like discussed above fail to pass the single-subject requirement. In Florida the amendment has been narrowed down to only address clean water while still meeting the other requirements of a true Green Amendment.¹²¹ Although the

¹¹⁷ *State ex rel. v. Evnen*.

¹¹⁸ *Active States*, Green Amendments For the Generations (Last Accessed May 7, 2024), <https://forthe generations.org/active-states/>.

¹¹⁹ *Advancing in Hawaii*, Green Amendments for the Generations (Last Accessed May 7, 2024), www.HIGreenAmendment.org.

¹²⁰ *About the Amendment*, Florida Right to Clean Water (Last Accessed May 8, 2024), <https://www.floridarighttocleanwater.org/about-7#:~:text=%22The%20people%20have%20the%20inherent,right%2C%20which%20is%20indefeasible.%22>.

¹²¹ *Id.*

state was not able to have the amendment approved in full, the passage of the amendment in piecemeal, focusing on specific aspects of the environment, like water, is another viable option. Should debate in the unicameral or other legal or academic discussion of the Nebraska Green Amendment seriously indicate that the above arguments for its single-issue status are not likely to prevail or that politically a full Green Amendment is not likely to be feasible, another option would be to follow in Florida's footsteps. Nebraska currently has a constitutional directive provision to protect water, however this could be expanded into a full legal right within the bill of rights as part of a piecemeal Green Amendment process. A more limited amendment would have more limited scope of application, however it would still enable Nebraskans to begin addressing a number of the environmental concerns which are prevalent surrounding water in the state.

PROPOSED LANGUAGE

Keeping in mind concerns about meeting the single-issue requirement and potential policy impacts on agriculture and the clean energy industry, the proposed language for the Nebraska Green Amendment, as developed by this paper, is as follows:

“Article I, Section 31 to the Nebraska state Constitution. Protecting Natural Resources.

All people have a right to a clean and healthy environment, including pure water, clean air, healthy soils, balanced ecosystems, a safe climate, diverse and abundant native flora and fauna, and to the preservation of the natural, cultural, scenic, recreational, and healthful qualities of the environment. The state shall take no action that would infringe upon these rights. The state, including each branch, agency, and political subdivision, shall serve as trustee of the natural resources of Nebraska and shall conserve, protect and

maintain these resources for the benefit of all the people, including present and future generations. The rights stated in this section are inherent, inalienable, and inalienable and are among those rights reserved to the people and are on par with other protected fundamental rights. The rights and obligations in this provision are self-executing.”

This language was developed first for this paper and then amended to this final form in connection with Nebraskan environmental lawyers and Maya van Rossum of the Green Amendment for Future Generations Movement. The language includes the key components of a successful Green Amendment, including specific climate language, self-executing language, explicit government trustee status, and individual rights. The language also reflects lessons from other states in the Green Amendment process and includes climate-specific¹²² and cultural-specific language¹²³ as a result. Initiative and referendum provisions are inherently self-executing under Article III, Section 4 of the Nebraska Constitution, although legislation may be enacted to facilitate the operation of the provisions.¹²⁴ For this reason, explicit language declaring the provision self-executing is unnecessary.

IMPLEMENTATION

It is possible that the above language will need to be adjusted based on legislative debate and on the suggestions of involved parties, however the language should be solidified as much as

¹²² Included as a result of the *Held v. Montana* case which required the petitioners first prove climate to be a part of the protected environment before going on to the merits of the case. *Held v. Montana*, 2023 WL 1997864.

¹²³ New Mexico introduced this language, as briefly mentioned in Part I specifically to include Native values and cultural traditions. Maine’s Green Amendment campaign then adapted this language to cover outdoor recreational and other activities seen as part of the state’s culture.

¹²⁴ Neb. Const. art. III, sec. 1C Adopted 1912, Laws 1911, c. 223, sec. 2, p. 671; Amended 1920, Constitutional Convention, 1919-1920, No. 4.

possible as early as possible to create a rallying point and basis of discussion for the larger movement needed to support Green Amendment passage. Having outlined possible language for the Nebraska Green Amendment, the following section addresses the state's constitutional amendment process and recommends that, despite its unlikeliness to succeed in the legislative process, the Green Amendment should first be introduced to the legislature before almost certainly needing to go on to a ballot referendum process for effective passage. The passage plan outlined by this proposal is broad and further work will be needed to develop it into a succinct and specific strategy, however this proposal is only intended to provide a general overview and outline major requirements to support a basis for further discussion with interested and supportive parties in the state.

CONSTITUTIONAL AMENDMENT PROCESS

There are three options for amending the Nebraska State Constitution: constitutional convention, legislative amendment, and ballot initiative.¹²⁵ Of these, the most likely to succeed is the ballot initiative for a few reasons, the primary being that, given today's polarized political climate, it is unlikely that the legislature will be able to secure the number of aye votes required for passage of a constitutional amendment addressing environmental issues. Both the legislative amendment process and the convention amendment process require 3/5ths vote of the legislature before being sent to the voters for approval.¹²⁶ In contrast, a ballot initiative also goes directly to the voters for a referendum following a petition process.¹²⁷ Ballot referendums on progressive

¹²⁵ Neb. Const. art. XV, sec. 1 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 39; Transferred by Constitutional Convention, 1919-1920, art. XVI, sec. 1; Amended 1952, Laws 1951, c. 161, sec. 1, p. 638; Amended 1968, Laws 1967, c. 317, sec. 1, p. 848.

¹²⁶ Neb. Const. art. III, sec. 1A (1912); Adopted 1912, Laws 1911, c. 223, sec. 2, p. 671; Amended 1920, Constitutional Convention, 1919-1920, No. 4; Amended 1988, Laws 1988, LR 248, sec. 1; Amended 1998, Laws 1997, LR 32CA, sec. 1; Amended 2004, Initiative Measure No. 418, sec. 1.

¹²⁷ *Id.*

issues have been successful in a number of more conservative states.¹²⁸ In Nebraska, petitions have succeeded in changing laws the legislature has refused or failed to address. Issues like sports betting, minimum wage,¹²⁹ and the Medicaid expansion were successful in ballot initiatives but almost certainly would've failed to pass the legislature or been vetoed with little chance of successful override.¹³⁰ Petition based constitutional amendments also cannot be vetoed by the governor¹³¹ who would almost certainly exercise that power if given the opportunity.

Despite the low chances of success with this method, introducing the Green Amendment to the legislature is still potentially worthwhile. Legislative history is useful to the interpretation of Green Amendments by courts¹³² and a good faith effort to pass the amendment through more traditional channels could potentially expand on, narrow, or otherwise alter the language of the amendment in beneficial ways. Attempting legislative passage can also provide insight into who will oppose such an amendment, how vehemently, and their reasons for doing so. In the same vein, legislative proceedings could also help to establish coalitions and put the amendment on the radar of potential allies, as well as the people generally. During the legislative process, proposed amendments will be entered into the journal with the corresponding votes and must be published in each county where a newspaper is published, once a week for three consecutive weeks leading up to the next election.¹³³ Should the unlikely happen and the amendment survive and succeed

¹²⁸ Monica Potts, *Why Republican Voters Support Ballot Initiatives Their Red States Do not*, FiveThirtyEight (Aug. 30, 2022), <https://fivethirtyeight.com/features/why-republican-voters-support-ballot-initiatives-their-red-states-do-not/>.

¹²⁹ Scott, *supra* note 3.

¹³⁰ Grant Schulte, *Expanded Medicaid begins in Nebraska after years of dispute*, AP (Sept. 30, 2020), <https://apnews.com/expanded-medicaid-begins-in-nebraska-after-years-of-dispute-572e3ac9bc92b5a88d58654486bcb724>.

¹³¹ Neb. Const. art. III, sec. 1C Adopted 1912, Laws 1911, c. 223, sec. 2, p. 671; Amended 1920, Constitutional Convention, 1919-1920, No. 4.

¹³² *Green Amendment Checklist*, *supra* note 6.

¹³³ Neb. Const. art. XV, sec. 1 (1875); Amended 1920, Constitutional Convention, 1919-1920, No. 39; Transferred by Constitutional Convention, 1919-1920, art. XVI, sec. 1; Amended 1952, Laws 1951, c. 161, sec. 1, p. 638; Amended 1968, Laws 1967, c. 317, sec. 1, p. 848.

in overriding an inevitable gubernatorial veto, the language would then be submitted to the electorate on a separate ballot for approval or rejection.¹³⁴

There is almost no point in attempting to call a constitutional convention to introduce this amendment. Not only is a convention difficult to call, requiring a popular vote in support of at least 35% of the electorate and the same $\frac{3}{5}$ vote as an individual constitutional amendment,¹³⁵ but also the danger exists that such a convention would fail to approve the amendment. The amendments also must still be approved by the electorate.¹³⁶ Additionally, there is the potential that a constitutional convention would enable the undermining of other important rights or enshrine prohibitive amendments which would deter some coalition support. For example, previous calls for constitutional conventions have been centered around everything from expanding gun-rights protections to eliminating the unicameral system.¹³⁷ Although a majority vote of the electorate is still required to approve convention amendments,¹³⁸ there is still a danger of such amendments being approved.

BALLOT INITIATIVE: THE PETITION PROCESS & TIMELINE

Ultimately, a Green Amendment is most likely to be implemented via ballot initiative. Under Article III-1 of the Nebraska state constitution, “the people reserve for themselves the power to propose laws and amendments to the Constitution and to enact or reject the same at the

¹³⁴ Neb. Const. art. III, sec. 1A (1912); Adopted 1912, Laws 1911, c. 223, sec. 2, p. 671; Amended 1920, Constitutional Convention, 1919-1920, No. 4; Amended 1988, Laws 1988, LR 248, sec. 1; Amended 1998, Laws 1997, LR 32CA, sec. 1; Amended 2004, Initiative Measure No. 418, sec. 1.

¹³⁵ Neb. Const. art. III, sec. 1A (1912); Adopted 1912, Laws 1911, c. 223, sec. 2, p. 671; Amended 1920, Constitutional Convention, 1919-1920, No. 4; Amended 1988, Laws 1988, LR 248, sec. 1; Amended 1998, Laws 1997, LR 32CA, sec. 1; Amended 2004, Initiative Measure No. 418, sec. 1.

¹³⁶ *Id.*

¹³⁷ Chris Dunker, *Constitutional Amendment would end unicameral experiment in Nebraska*, LINCOLN JOURNAL STAR (Jan. 4, 2023), https://journalstar.com/news/state-and-regional/govt-and-politics/constitutional-amendment-would-end-unicameral-experiment-in-nebraska/article_998f1db2-e9eb-54ef-8b0c-881697290196.html.

¹³⁸ Neb. Const. art. XV, sec. 2 (1875); Transferred by Constitutional Convention, 1919-1920, art. XVI, sec. 2; Amended 1952, Laws 1951, c. 162, sec. 1, p. 640.

polls, independent of the Legislature, which power shall be called the power of initiative.”¹³⁹ In order to utilize this power, the full language of the proposed amendment must be presented as a petition to the public and signed by 10% of eligible voters.¹⁴⁰ These signatures must include 5% of the registered voters of 2/5 (of the state’s 93 counties - a requirement which exists to make sure that petitions are not only reflecting the opinions of the 70% of the state’s population which lives in Douglas, Sarpy, and Lancaster county but rather the state as a whole.¹⁴¹ This is known as the 2/5ths rule¹⁴²and works out to 5% of the vote in 38 counties.¹⁴³ For example, in the smallest Nebraska county, Blaine, is home to 384 people, so roughly 20 people would need to sign the petition.¹⁴⁴ Strategies may not need to change substantially between most counties, however certain arguments will play better in Douglas, Sarpy, and Lancaster than in Cass or Seward.

Following the signature collection, the amendment must be filed with the Secretary of State who will then submit the proposed measure to the electors at the first general election to occur following submission of the petition.¹⁴⁵ Should the next general election be within less than four months of filing, the measure will be included in the following election.¹⁴⁶ Given these timeline requirements, ideally the petition would be filed by the end of July to qualify for a November election in the same calendar year.¹⁴⁷ This means that signature collection would need

¹³⁹ Neb. Const. art. III, sec. 1 (1875); Amended 1912, Laws 1911, c. 223, sec. 2, p. 671; Amended 1934, Initiative Measure No. 330; Amended 2000, Laws 1999, LR 18CA, sec. 3.

¹⁴⁰ Neb. Const. art. III, sec. 1C Adopted 1912, Laws 1911, c. 223, sec. 2, p. 671; Amended 1920, Constitutional Convention, 1919-1920, No. 4.

¹⁴¹ *Id.*

¹⁴² Travis Moore & Logan Seacrest, *Initiative & Referendum in Nebraska*, LEGISLATIVE RESEARCH OFFICE, (Mar. 2017), https://nebraskalegislature.gov/pdf/reports/research/initiative_referendum_2017.pdf.

¹⁴³ *Id.*

¹⁴⁴ *Nebraska Counties by Population*, Nebraska Demographics (Last Accessed May 7, 2024), https://www.nebraska-demographics.com/counties_by_population.

¹⁴⁵ Neb. Const. art. III, sec. 1A (1912); Adopted 1912, Laws 1911, c. 223, sec. 2, p. 671; Amended 1920, Constitutional Convention, 1919-1920, No. 4; Amended 1988, Laws 1988, LR 248, sec. 1; Amended 1998, Laws 1997, LR 32CA, sec. 1; Amended 2004, Initiative Measure No. 418, sec. 1.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

to start in July of the previous year. So, to qualify for a 2028 ballot, signature collection would need to begin in July 2027 and finish in July 2028 for an effective process.¹⁴⁸ Should the ballot initiative fail, the same measure “either in form or in essential substance”¹⁴⁹ cannot be resubmitted again for three years.¹⁵⁰

In New York, the Green Amendment process took four years to reach fruition.¹⁵¹ The amendment was introduced legislatively first in 2017 but was not approved.¹⁵² Two more legislative attempts were made in 2019 and again in 2020 before the amendment successfully passed both houses of the New York State Assembly in 2021.¹⁵³ The amendment then went to ballot referendum in 2021, and won 70% of the vote in support.¹⁵⁴ Other Green Amendments in progress are also requiring more than one legislative session to accomplish their goals or have needed to shift to a ballot initiative process.¹⁵⁵ It is almost certain that, like other states with a Green Amendment movement, multi-year effort will be required in Nebraska to achieve Green Amendment passage.

It is likely that this movement will have a slow start, moving through and likely failing to pass via the legislative process, before the ballot initiative work can start. Likely this means that a ballot initiative process would at the earliest be up for public referendum in 2026 given that the 2024 legislative session has ended. More likely, the ballot referendum will need to wait until

¹⁴⁸ This is based on the petition process timeline used by the Nebraskans for Medical Marijuana Campaign which began collection signatures in July 2023 and will end July 3, 2024. The ballot initiative will be on the 2024 ballot assuming all goes well with the single-subject rule and the meeting of other constitutional amendment requirements. Chase Porter, *Nebraska’s Medical Marijuana Petition Outpacing Past Efforts*, KLIN: NEWS TALK (Dec. 21, 2023), <https://klin.com/2023/12/21/nebraskas-medical-marijuana-petition-outpacing-past-efforts/#>.

¹⁴⁹ Neb. Const. art. III, sec. 1A (1912); Adopted 1912, Laws 1911, c. 223, sec. 2, p. 671; Amended 1920, Constitutional Convention, 1919-1920, No. 4; Amended 1988, Laws 1988, LR 248, sec. 1; Amended 1998, Laws 1997, LR 32CA, sec. 1; Amended 2004, Initiative Measure No. 418, sec. 1.

¹⁵⁰ *Id.*

¹⁵¹ Fein et. al, *supra* note 134.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

2028 to fully capitalize on voter turnout, sufficiently raise funds for a ballot initiative campaign, collect and present enough signatures to the Secretary of State for approval, and address any, likely politically motivated, legal challenges. Typically, concern about voter enthusiasm has been low and some states, including Hawai'i, are optimistic that such a referendum could get more young people to come out to the polls.¹⁵⁶ Despite this, for the best possible results, a ballot referendum would likely want to happen in a presidential election year unless another issue on the ballot is likely to get out the vote in larger than usual numbers. Should abortion or recreational marijuana be ballot initiatives in 2026, then it is likely that higher turnout could also support a Green Amendment referendum. However, this would be a rather fast turnaround and assumes that the amendment can be introduced in the next (2025) legislative session. Since legislators are likely already considering their priorities for the next session, it is highly possible that prioritizing a bill for the Green Amendment may have to wait until the following session (2026).

ACTORS TO INVOLVE

In order to begin the Green Amendment process, at least one state senator will need to be on board and strongly in support of the amendment to the point that they are willing to introduce and push a bill addressing the issue. Additionally, said senator will need to be willing and able to work with the other groups involved in the Green Amendment movement, ideally throughout the duration of the ballot initiative process. Having a noted political figure visibly in support and even helping to lead the initiative effort is important to building citizen support and to convincing those on the fence about the idea as the involvement of elected officials may lend some legitimacy to the movement. Of the current Nebraska state senators, a few stand out as

¹⁵⁶ *Id.*

potential sponsors for the bill as a result of their professional backgrounds and legislative histories. George Dungan, John Cavanaugh, John Fredrickson, Wendy DeBoer, and Terrell McKinney are the most likely options to be interested and able to support a Green Amendment bill. Cavanaugh and McKinney are up for reelection in 2024, with McKinney facing a challenge from the popular former senator Ernie Chambers.¹⁵⁷ Dungan and Fredrickson will be up for reelection in 2026.¹⁵⁸ DeBoer will be term limited at that time.¹⁵⁹ Of these proposed members, Dungan, Cavanaugh, and DeBoer are all lawyers, giving them potentially more ability to deeply understand and advocate for the legal benefits and basis for such a constitutional amendment.¹⁶⁰ Cavanaugh and Fredrickson also both sit on the Natural Resources Committee where this bill is likely to be processed.¹⁶¹ Given the elections at play and the backgrounds of these particular members, the best options, assuming reelection are Dungan, Frederickson, and Cavanaugh. The next step would be to reach out to these members to discuss the idea of a Green Amendment, confirm official language, and coordinate a legislative strategy which includes other interested senators as well as lobbyists and advocacy groups.

A number of organizations who have been floated the idea of a Green Amendment have expressed interest, including Nebraska Elder Climate Legacy, Students for Sustainability, and the Sierra Club. Further discussion of the amendment with similar environmental organizations, as well as with advocacy organizations focused on issues related to agriculture, economic and racial

¹⁵⁷ *Nebraska State Senate elections, 2024*, BALLOTOPEdia (Last Accessed May 8, 2024), https://ballotpedia.org/Nebraska_State_Senate_elections_2024.

¹⁵⁸ Senator Landing Pages, *supra* note 157.

¹⁵⁹ *Id.*

¹⁶⁰ Nebraska Legislature, *Sen. Wendy DeBoer*, Senators (Last Accessed May 8, 2024); Nebraska Legislature, *Sen. John Cavanaugh*, Senators (Last Accessed May 8, 2024); Nebraska Legislature, *Sen. George Dungan*, Senators (Last Accessed May 8, 2024); Nebraska Legislature, *Sen. Terrell McKinney*, Senators (Last Accessed May 8, 2024); Nebraska Legislature, *Sen. John Frederickson*, Senators (Last Accessed May 8, 2024), [hereinafter “Senator Landing Pages”], https://nebraskalegislature.gov/senators/senator_list.php.

¹⁶¹ *Id.*; *Standing Committees*, Nebraska Legislature (Last Accessed May 8, 2024), <https://nebraskalegislature.gov/committees/standing-committees.php>.

justice, healthcare, and children could also lead to more bases of support. Working with a large coalition of actors presents some problems if the movement is not centrally organized, however with a key leadership team, a large coalition is beneficial to outreach, advocacy, and potentially funding. Working with national level groups like Green Amendments For Future Generations and the National Caucus of Environmental Legislators is also helpful to coordinating Nebraska's efforts with those of other states attempting passage of a Green Amendment. Continued knowledge and strategy sharing across state lines can benefit everyone's movements. Larger national organizations may also have more access to funding resources and ideas for funding options.

CONCLUSION

The passage of a Green Amendment in the state of Nebraska is unlikely to be an easy or short process, however it is a goal worth pursuing. A Green Amendment would benefit the state, its people, and its natural environment by creating an individualized actionable state constitutional right to a clean and healthy environment. Such a right can support Nebraskans in protecting themselves and their communities from negative environmental impacts by allowing them to hold the state and its actors responsible for both their actions and inaction in environmental protection and by filling in gaps in the existing environmental regulatory scheme. This is especially important in a more conservative state like Nebraska where often environmental protection issues are waived off as the concerns of bleeding-heart liberals and where the political climate often leads legislators to side with monied and business interests in regulatory and lawmaking decisions or opt to simply vote along party lines. This proposal has outlined the potential of this amendment to benefit the state, as well as how a successful passage might occur. Further strategy development with the involved parties will be necessary to move

forward, however in laying out the requirements of Green Amendments, their history and impact, and the constitutional processes of the state of Nebraska, this proposal has laid some foundations for a Green Amendment movement to take root in the state.

Despite potential sectors of opposition, the benefits of a Green Amendments have demonstrated appeal across political lines and popularity with a variety of different people. Giving Nebraskans the tools to hold the government to its own existing environmental policies and to push the state to make more environmentally conscious decisions is worth the time, energy, and financial cost of implementing a Green Amendment. With a successful ballot initiative, Nebraskans can better protect themselves from environmental degradation, pollution, and the effects of climate change, even in the face of increasing political gridlock and corruption. As the state and its people continue to grapple with rapid climate change, including the extreme weather events which have wreaked untold pain and destruction across the state in recent years, and in response to the growing awareness of the dangers of forever chemicals, plastics, and other human-made compounds, a Green Amendment is just what Nebraska needs to give its people a fighting chance.