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Rebecca Bratspies*

ABSTRACT

Since New York became the latest state to pass an environmental rights amendment, there has been a great deal of analysis regarding how the judiciary will interpret the Green Amendment; however, state and local officials need not wait for the courts to enforce the Green Amendment. This Article explores the authority state and local officials have to carry out the purpose of the Green Amendment. Additionally, it discusses what the passage of the Green Amendment means in practice and how, and why, state officials such as the Attorney General should implement the Green Amendment.

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*Professor, CUNY School of Law, Director Center for Urban Environmental Reform. Many of the ideas in this essay emerged from conversations with Professors Nicholas Robinson, Katrina Kuh, Todd Ommen, James May, and Michael Gerard, as well as advocates Maya van Rossum, Sonya Chung, Anthony Rogers-Wright, and my CUNY Law students in my Spring 2023 Environmental Justice Lawyering Seminar. This essay benefited from conversations at the University of Albany’s 2022 Warren M. Anderson Legislative Seminar Series, Green Amendment: Mountain or Molehill, and Pace Environmental Law Review’s Symposium on Environmental Constitutionalism. Thank you to Jonathan Saxon and Kathy Williams for superb research support.
INTRODUCTION

In November 2021, New Yorkers voted to add an environmental rights amendment to Article I of the New York Constitution—as Section 19 of the State Bill of Rights. In this, New York is part of a growing social consensus on environmental rights across the United States and around the world. New York’s Environmental Rights Amendment, also called the Green Amendment, provides, in its entirety, that “[e]ach person shall have a right

1. In re Haw. Electric Light Co., Inc., 526 P.3d 329, 336 (Haw. 2023) (affirming the Hawai’i Public Utility Commission’s denial of a permit for a biomass energy facility because of its outsize carbon emissions that would contribute to the climate emergency declared by the Hawai’i legislature).
5. Many of those who worked to pass and implement this amendment call it New York’s Green Amendment. See e.g., VAN ROSSUM, supra note 3, at 17–19; Brian Keegan, Legislators, Advocates Call for Green Amendment in State’s Constitution, ENV’T ADVOCS. N.Y. (Apr. 9, 2019),
to clean air and water, and a healthful environment.”

This language is both sweeping and simple. It guarantees all New Yorkers the constitutional right to live, work, and play in communities that are safe, healthy, and free from harmful environmental conditions. As Steve Englebright, the Amendment’s primary sponsor in the State Assembly, explained: “the right to clean air and . . . clean water and a healthful environment is an elementary part of living in this great State.”

By overwhelmingly approving the Environmental Rights Amendment, New York voters sent a clear message that environmental rights are central to how New York law should be understood and implemented.

It sounds great. But what does it really mean? Can New York translate these words on paper into environmental choices that protect those whose environmental rights are most in jeopardy? If so, how? Most of the analyses and predictions surrounding implementation of the Environmental Rights Amendment focus on litigation—how courts will define or limit the scope of

https://eany.org/press_release/legislators-advocates-call-for-green-amendment-in-states-constitution/ [https://perma.cc/XV7H-JBBL]. For information on green amendments and the campaign to add these amendments to state constitutions, see GREEN AMENDS. FOR THE GENERATIONS, https://forthegenerations.org/ [https://perma.cc/Y2Z7-SBD8]. However, there is some infighting about what exactly constitutes a “Green” Amendment, and some environmental justice advocates express concerns that the term is too technocratic and steers attention away from overburdened communities. See e-mail from Anthony Rogers-Wright, Dir. of Env’t Just., New York Laws. for the Pub. Int., to author (Sept. 25, 2022) (on file with author). To avoid any political pitfalls and to increase clarity, this article will refer to Article I, Section 19 as the Environmental Rights Amendment.

8. The ballot initiative that added environmental rights as Section 19 of Article I of the New York Constitution was supported by more than seventy percent of voters. New York Proposal 2, Environmental Rights Amendment (2021), BALLOT PEDIA, https://ballotpedia.org/New_York_Proposal_2:_Environmental_Rights_Amendment_(2021) [https://perma.cc/25N8-D4M2]. Support for the measure cut across the usual political divides and indicated widespread political support for adding environmental rights to the state constitution. Indeed, in their opposition to the proposal, the New York Business Council noted that over eighty percent of the population expressed support for adding environmental rights to the state constitution. The Business Council Opposes Proposition 2 - Environmental Rights Amendment, THE BUS. COUNCIL (Oct. 27, 2021), https://www.bcnys.org/news/business-council-opposes-proposition-2-environmental-rights-amendment [https://perma.cc/86QY-ZKLV]. Moreover, before being added to the ballot, the proposed amendment first had to be voted on by both houses of the state legislature in two separate legislative sessions. N.Y. CONST. art. XIX, §1. Only after two successive legislatures voted to approve the amendment (which they did by overwhelming margins) was the proposed amendment presented to the voters for ratification. Id.
this new constitutional provision. This analysis starts from a different place. It begins with the conviction that it is through the nitty-gritty process of decision-making about permitting, siting, and enforcement that the scope and scale of this constitutional amendment will take shape. It recognizes that there are other actors with legal authority than courts and other sites of legal decision-making.

With those principles in mind, this Article asserts that state and local officials already possess the legal authority necessary to implement the Environmental Rights Amendment. Moreover, now that environmental rights are part of the New York Constitution, those state and local officials have a duty to exercise their existing authority in a fashion consistent with those rights. This Article frames those public officials as front-line legal decisionmakers exercising discretion within parameters defined by community values. It asserts that these actors have an obligation to revise their daily workways to align with and advance the new constitutional mandate as part of fulfilling their obligation to “take care that the laws are faithfully executed.” By embracing this challenge, state and local agencies can translate constitutional environmental rights into facts on the ground and begin building an administrative culture that prioritizes and values the constitutional right to clean air, clean water, and a healthful environment.

In this fashion, New York’s state and local officials will be well-positioned to navigate the conflict that will inevitably arise between those seeking to engage in environmentally damaging activities (with a wide array of social utility) and those seeking to instantiate the right to a healthful environment. As these regulators adapt, apply, and interpret constitutional phrases like “clean air” and “clean water” in the context of their daily work,

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10. Indeed, the recognition that actors other than judges make influential decisions about law and that decisionmakers are guided by community preferences in exercising their decision-making authority dates all the way back to the New Haven School. See, e.g., Howard D. Lasswell & Myres S. McDougal, Criteria for a Theory About Law, 44 S. CAL. L. REV. 362, 373 (1971); Rebecca M. Bratspies, Rethinking Decisionmaking in International Environmental Law: A Process-Oriented Inquiry into Sustainable Development, 32 YALE J. INT’L L. 363, 369 (2007) [hereinafter Rethinking Decisionmaking].

11. One of the New Haven School’s most notable contributions to legal discourse was the recognition of “authoritative decision,” meaning decisions that embody both power and authority emerge from a wide range of decisionmakers in contexts beyond court decisions, legislation, and treaties. For a full exploration of this point, see Rethinking Decisionmaking, supra note 10.

12. Id.

13. N.Y. CONST. art. IV, § 3.
they will give depth and specificity to these constitutional mandates.\textsuperscript{14} In the process, these agency actors can produce transformative change that ends the pattern of treating racialized communities as environmental sacrifice zones. The environmental benefits from that change would redound to all New Yorkers.

I. BACKGROUND ON CONSTITUTIONAL ENVIRONMENTAL RIGHTS

Around the world, an overwhelming majority of countries incorporate some form of environmental rights into their national constitutions.\textsuperscript{15} The United States does not. There are many possible explanations for why the United States stands largely alone in not recognizing environmental rights in its national constitution: some argue that the federal system of enumerated rather than plenary powers makes the Constitution ill-suited to environmental amendments.\textsuperscript{16} This claim resonates strongly with those with an ideological pre-commitment to negative, rather than positive rights (Sixth and Seventh Amendment rights notwithstanding).\textsuperscript{17} Others point to the age of the United States Constitution, combined with the difficulty of amending it.\textsuperscript{18} The lower federal courts have uniformly rejected arguments that the

\textsuperscript{14} The New York Court of Appeals unambiguously held that “[t]he fact that a right granted by a constitutional provision may be better or further protected by supplementary legislation does not of itself prevent the provision in question from being self-executing.” People v. Carroll, 148 N.E.2d 875, 879 (1958) (discussing waiver of jury trial).

\textsuperscript{15} JAMES R. MAY, ENVIRONMENTAL RIGHTS AND WRONGS: IMPLEMENTING ENVIRONMENTAL CONSTITUTIONALISM 1 (Eivind Smith Festschrift et al. eds., forthcoming 2020); see also DAVID R. BOYD, THE ENVIRONMENTAL RIGHTS REVOLUTION 47, 50 tbl.3.1 (2012).


\textsuperscript{17} Judge Posner perhaps stated this position most clearly when he wrote that the United States Constitution “is a charter of negative rather than positive liberties” adding that “[t]he men who wrote the Bill of Rights were not concerned that government might do too little for the people but that it might do too much to them.” Jackson v. City of Joliet, 715 F.2d 1200, 1203 (7th Cir. 1983) (characterizing the Constitution as a “charter of negative . . . liberties.”). The Supreme Court similarly embraced a vision of the United States Constitution rooted in negative rights. DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs., 489 U.S. 189, 195 (1989) (finding that the due process clause imposed no affirmative obligations on state governments).

\textsuperscript{18} Of the thousands of proposed constitutional amendments, only a small handful have become law. 2 JOHN R. VILE, ENCYCLOPEDIA OF CONSTITUTIONAL AMENDMENTS, PROPOSED AMENDMENTS, AND AMENDING ISSUES 1789-2015 545–46 (4th ed. 2015). See also, Robert V. Percival, “Greening” the Constitution—Harmonizing Environmental and Constitutional Values, 32 Env’t L. 809, 812 (2002); see generally RACHEL CARSON, SILENT SPRING 12-13 (25th Anniversary ed., Houghton Mifflin Co. 1987) (1962) (“If the Bill of Rights contains no guarantee that a
Fourteenth Amendment’s due process clause already incorporated environmental rights.\(^{19}\) Congressional attempts to amend the Constitution to include an explicit environmental provision have failed to gain traction.\(^{20}\) Indeed, the Federal Constitution has rarely been amended.\(^{21}\)

However, the Federal Constitution is not the only constitutional game in town. In the United States federal system, each of the fifty states has a state constitution in addition to the national constitution, as do many Tribal citizen shall be secure against lethal poisons distributed either by private individuals or by public officials, it is surely only because our forefathers, despite their considerable wisdom and foresight, could conceive of no such problem.”).


\(^{20}\) For example, under the leadership of Wisconsin Senator Gaylord Nelson, Congress considered but did not adopt a constitutional amendment to guarantee that “every person has the inalienable right to a decent environment.” S.J. Res. 169, 91st Cong. (2d Sess. 1970) (“Every person has the inalienable right to a decent environment. The United States and every state shall guarantee this right.”).

\(^{21}\) Drew DeSilver, Proposed Amendments to the U.S. Constitution Seldom Go Anywhere, PEW ROCH. CTR. (Apr. 12, 2018), https://www.pewresearch.org/short-reads/2018/04/12/a-look-at-proposed-constitutional-amendments-and-how-seldom-they-go-anywhere/ [https://perma.cc/13HX-355G]. In 1992, the Twenty-Seventh Amendment was ratified, which provides that “no law varying the compensation for the services of the Senators and Representatives shall take effect until an election of representatives shall have intervened.” U.S. CONST. amend. XXVII. There is currently debate about whether the Equal Rights Amendment has been ratified. Alex Cohen & Wilfred U. Codrington III, The Equal Rights Amendment Explained, BRENNAN CTR. FOR JUST. (Jan. 23, 2020), https://www.brennancenter.org/our-work/research-reports/equal-rights-amendment-explained [https://perma.cc/26RD-UDLG].
The relationship between state and federal constitutions is relatively straightforward most of the time. The Federal Constitution’s Bill of Rights, which applies to the states through the Fourteenth Amendment, defines the minimum constitutional rights that must be accorded to every person in the United States. While States cannot use their constitutions to deprive individuals of the minimum federally guaranteed rights, they may add or expand rights. State and Tribal constitutions typically contain recognition of positive rights, rooted in the state and Tribe’s plenary powers. Moreover, these subnational constitutions are also more readily and routinely amended than the Federal Constitution. For example, the New York State Constitution was rewritten three times during the nineteenth century (in 1821, 1846, and 1894), extensively revised in 1938, and has been amended more than 200 times over the last century.

II. WHAT DOES IT MEAN TO ADD ENVIRONMENTAL RIGHTS TO THE NEW YORK CONSTITUTION?

The New York Constitution is the supreme law of the state. From its earliest days, New York has recognized constitutional amendments as the expression of the sovereign will of the people. As such, its constitution expresses the core principles upon which the government rests and instructs how the State’s sovereign powers are to be exercised. Article I of the New York Constitution is known as the State Bill of Rights. This part of the New York Constitution enumerates the fundamental rights guaranteed in New York, specifically those identifying individual liberties and the limits of state

22. Tribes also have constitutions, many of which are available online. See Tribal Constitutions, TRIBAL CT. CLEARINGHOUSE, https://www.tribal-institute.org/lists/constitutions.htm [https://perma.cc/28A7-QFFK].
24. Burton C. Agata, Individual Liberties, in THE NEW YORK STATE CONSTITUTION: A BRIEFING BOOK 83, 84 (Gerald Benjamin ed., 1994) (describing the Fourteenth Amendment as a “floor under the constitutional rights of the individual.”).
25. Id.
30. See id. at 1057–58.
Thus, it matters that the Environmental Rights Amendment was added to Article I. By voting to make the Environmental Rights Amendment Section 19 of Article I, New Yorkers expressed their sovereign will to put environmental rights on par with other fundamental and inalienable rights. Article I rights are self-executing, meaning they impose duties and obligations on the state regardless of whether there is legislation defining their scope and substance. While there are many consequences of a constitutional provision being deemed self-executing without the need for supplemental legislation, the one most relevant to this discussion is that the self-executing constitutional provision is enforceable in a common law action.

In this, the Environmental Rights Amendment differs from some rights recognized elsewhere in the New York Constitution. For example, the New York Constitution provides that “[t]he legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated.” In a relatively recent landmark ruling, the New York Court of Appeals found that this language guaranteed schoolchildren the right to a “sound basic education.” However, this constitutional right is considered non-self-executing, meaning that there is no direct cause of action under the New York Constitution to remedy an alleged violation of this right. Instead a claimant making a constitutional challenge...
must argue that the way the legislature has implemented this right is unconstitutional. By contrast, the rights in Article I are self-executing, and thus give rise to a direct cause of action independent of legislative implementation.\textsuperscript{38}

The Environmental Rights Amendment is not the first environmental provision in the New York Constitution. In 1894, New York added Article XIV, which required the state to maintain much of the Adirondacks and the Catskills as a forest preserve. This article reads, in relevant part:

\begin{quote}
The lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed.\textsuperscript{39}
\end{quote}

Colloquially known as the “Forever Wild” provision, this constitutional provision has been central to New York’s conservation and land policies.\textsuperscript{40}

By ratifying the Environmental Rights Amendment, New York has once again placed itself as the vanguard of environmental constitutionalism, but it is far from alone in its embrace of environmental rights. Montana,\textsuperscript{41}


\textsuperscript{39} N.Y. CONST. art. XIV, § 1. In 2021, the New York Court of Appeals issued a landmark decision affirming that this Article XIV language barred the state from paving trails through forest preserve, or making other major changes, except by constitutional amendment. Protect the Adirondacks! Inc. v. N.Y. State Dep’t of Env’t Conservation, 170 N.E.3d 424, 425–27 (N.Y. 2021). This case, authored by my former CUNY Law Colleague Judge Jenny Rivera, upheld an expansive interpretation of “forever wild.” Id. at 439.

\textsuperscript{40} For a detailed history of the Forever Wild provision in Article XIV, see Nicholas A. Robinson, Updating New York’s Constitutional Environmental Rights, 38 PACE L. REV. 151, 156–62 (2017).

Pennsylvania, and Hawai‘i, and to a lesser extent Massachusetts and Illinois, recognize environmental rights, as do the national constitutions of well over 100 countries. Multiple other states are in various stages of considering similar amendments. The United Nations Human General Assembly recently recognized the right to a clean, healthy, and sustainable environment as a universal human right.

III. HOW WILL THIS AMENDMENT PROMOTE ENVIRONMENTAL JUSTICE?

Environmental justice involves both meaningful involvement of communities in decisions by which environmental choices are made and fair treatment with regard to environmental burdens and benefits. However, policymakers in the United States have typically reduced environmental

42. PA. CONST. art. I, § 27, provides:

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.

43. HAW. CONST. art. XI, § 1. In March 2023, the Hawai‘i Supreme Court ruled that this provision of the Hawai‘i Constitution included the right to “a life-sustaining climate system.” In re Hawai‘i Elec. Light Co., 526 P.3d 329, 336 (Haw. 2023).

44. MASS. CONST. art. XC VII.

45. ILL. CONST. art. XI, §§ 1, 2. The language in the Illinois constitution is sweeping, but the state’s courts have greatly limited its scope. Ill. Pure Water Comm. Inc. v. Dir. of Pub. Health, 470 N.E.2d 988, 992 (Ill. 1984) (finding that environmental rights are not “fundamental”); Glisson v. City of Marion, 720 N.E.2d 1034, 1045 (Ill. 1999) (finding that citizens lack standing to enforce Article XI).


47. See supra note 3 and accompanying text.


49. Learn About Environmental Justice, U.S. ENV’T PROT. AGENCY, https://www.epa.gov/environmentaljustice/learn-about-environmental-justice [https://perma.cc/32YD-SV39]. For Earth Day 2023, President Biden issued an executive order refining and expanding the definition of environmental justice. Exec. Order No. 14096, 88 Fed. Reg. 25251 (2023). This new executive order, titled Revitalizing Our Nation’s Commitment to Environmental Justice for All, specifically directed federal agencies to advance environmental justice for all by prioritizing a wide range of integrated justice-related considerations including cumulative impacts, underinvestment, and lack of access to good schools and jobs. The executive order also explicitly recognizes that environmental injustice in the United States is rooted in overt racial discrimination.
rights to their procedural components. When viewed through this wholly procedural lens, public participation mechanisms take on outsized importance. The National Environmental Policy Act (NEPA)\(^5\) and the New York State Environmental Quality Review Act (SEQRA)\(^5\) create a pathway for public participation in environmental decision-making processes. However, these statutes have been interpreted as wholly procedural—designed to prevent “uninformed—rather than unwise” environmental decisions.\(^5\) Thus public participation is often used to legitimize environmental decisions, even those that result in overburdening some communities and “underburdening” others.\(^5\)

The Environmental Rights Amendment does far more. This amendment shifts the baseline for considering environmental (in)justice. As I have written elsewhere, this amendment gives “substantive heft” to what were formerly procedural environmental rights.\(^5\) With the adoption of the Environmental Rights Amendment, the right to clean air, pure water, and a healthy environment now stands on equal constitutional footing with the right to property,\(^5\) the right to petition the government,\(^5\) freedom of religion,\(^5\) and freedom of speech.\(^5\) Like these other constitutional provisions enshrined in the New York Bill of Rights, the Environmental Rights Amendment delineates self-executing rights that the government can neither deny nor infringe.\(^5\)

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\(^5\) N.Y. ENV’T CONSERV. LAW §§ 8-0101–8-0117 (LexisNexis 2024).
By grounding environmental rights in the Bill of Rights in the state constitution, New Yorkers have decided that every New Yorker has the right to clean air, clean water, and a healthful environment. The State cannot violate these environmental rights through its decisions about licensing, siting, and enforcement. Thus, the Amendment imposes constraints on what the government can do vis-à-vis environmental rights as well as on how the government must make decisions. All state and local government actors will need to ensure their decisions take full account of environmental rights and do not impede those rights. In short, the Environmental Rights Amendment reshapes the lens through which state actors interpret, implement, and enforce their authority. Public officials of all stripes must now embed protecting environmental rights into the fabric of all governmental decisions.

Moreover, the Environmental Rights Amendment clearly articulates that environmental rights belong to everyone. When everyone has the same inalienable right to clean air, clean water, and a healthful environment, no neighborhoods can be turned into sacrifice zones. The Amendment puts issues of fair treatment with regard to how environmental burdens and benefits are actually distributed across communities within the State squarely on the table. With that as the starting point, environmental justice becomes the core of agency decision-making in a wide array of contexts including manufacturing, transportation, waste handling, handling hazardous and toxic substances, and the transition to green energy. These constitutional environmental rights thus have the potential to produce transformative environmental justice.

Such a transformation is overdue. For far too long New York’s Black communities, communities of color, and low-income communities have borne far more than their fair share of the environmental burdens. With pollution disproportionately and systematically impacting their communities, they have had to fight tooth and nail for basic environmental rights. Not only have these underserved and overburdened communities borne the brunt of polluted air and contaminated water in New York, they now find
themselves on the front lines of climate change. Many of these communities already experience flooding and excessive heat.

None of this is by accident. Nearly a century ago, structural racism in the form of redlining intentionally cut Black and Brown communities out of the New Deal and out of the economic prosperity it built. New York compounded this legacy of structural racism by steering most of its polluting infrastructure into these same communities, and then by failing to protect those communities with rigorous environmental enforcement. As a result,


67. See RICHARD ROTHSTEIN, THE COLOR OF LAW 64–65 (2017); JULIE SZE, NOXIOUS NEW YORK 45 (2007); Deborah N. Archer, “White Men’s Roads Through Black Men’s Homes”: Advancing Racial Equity Through Highway Reconstruction, 73 VAND. L. REV. 1259, 1286 (2020). However, there is no guarantee that the Environmental Rights Amendment will actually build environmental justice. One of the first cases brought under the amendment was brought by white suburbanites challenging the New York Department of Transportation’s decision to remove a highway bypass that had been forced through a historically Black community in Syracuse and to replace it with a community grid street plan. Renew 81 for All v. N.Y. State Dep’t of Transp., No. 916 CA 23-00388 (N.Y. App. Div. Feb. 2, 2024). The community grid option was by far the preference of the City and its residents, especially those most impacted by the bypass. The irony of this use of the amendment to undermine environmental justice has not gone unnoticed. See Tim Knauss, Black Leaders in Syracuse Angered and Mystified by Lawsuit that Halts Years of Work on I-81, SYRACUSE.COM (Nov. 28, 2022), https://www.syracuse.com/news/2022/11/black-leaders-in-syracuse-angered-and-mystified-by-lawsuit-that-halts-years-of-work-on-i-81.html [https://perma.cc/8SUU-CDSJ].

68. Peggy Shepard, Building Justice: NYC’s Sacrifice Zones and the Environmental Legacy of Racial Injustice, CITY LIMITS (Oct. 10, 2016), https://citylimits.org/2016/10/10/building-
a Black child in New York is forty-two percent more likely to have asthma than a white child, 69 eight times more likely to be hospitalized for asthma-related ailments, 70 and two or three times as likely to miss days of school because of asthma. 71 Across the State, Black New Yorkers are between two and three times more likely to die from asthma related complications. 72 The same grim disparities hold true for cardiovascular and pulmonary disease, which are also closely related to pollution. 73 Recent studies have shown how increased exposure to air pollution heightens the risks posed by COVID-19. 74

The Environmental Rights Amendment’s guarantee of substantive environmental rights is a step toward changing this inequity. Indeed, the chief sponsor, Assemblymember Englebright’s statement that these rights are “an elementary part of living in this great State” 75 underscores that environmental justice is a key rationale for constitutionalizing environmental rights. After all, the rights described in this Environmental Rights Amendment apply to “each person,” not just to those wealthy enough to live in the right


70. See id.; see also Helen K. Hughes et al., Pediatric Asthma Health Disparities: Race, Hardship, Housing, and Asthma in a National Survey, 17 ACAD. PEDIATRICS 127, 132 (2017); Sally Findley et al., Elevated Asthma and Indoor Environmental Exposures Among Puerto Rican Children of East Harlem, 40 J. ASTHMA 557, 561–63 (2003) (providing additional data).


73. Eric B. Brandt et al., Air Pollution, Racial Disparities, and COVID-19 Mortality, J. ALLERGY & CLINICAL IMMUNOLOGY 61, 61 (2020); Salem Dehom et al., Racial Difference in the Association of Long-Term Exposure to Fine Particulate Matter (PM2.5) and Cardiovascular Disease Mortality among Renal Transplant Recipients, INT’L J. ENV’T RSCH. & PUB. HEALTH 1, 1–2 (2021).

74. X. Wu et al., Air Pollution and COVID-19 Mortality in the United States: Strengths and Limitations of an Ecological Regression Analysis, 6 SCI. ADVANCES, no. 45, 2020, at 1, 1 (2020).

75. Transcript of New York State Assembly Session, supra note 7, at 49.
zip codes or to those with the right education, the right jobs, the right com-
plexion, the right accent, or the right religion.76

Moreover, the Environmental Rights Amendment can be read in com-
bination with the pre-existing constitutional guarantees of equal protection
under law and the prohibition of discrimination contained in Article I, Sec-
tion 11 of the New York Constitution. To fulfill their interrelated constitu-
tional duties of equal protection and respecting environmental rights, all
government actors, from courts, to legislators and regulators will have to
prioritize protecting the most vulnerable from pollution, degradation, and
climate change, and ensuring that environmental burdens are not heaped
on already overburdened communities.

IV. WHAT WILL THIS AMENDMENT MEAN IN PRACTICE?

The challenge will be turning law on the books into change in the world
and ensuring that this constitutional change marks the end of business as
usual for polluters. If we are successful, the Green Amendment will mark
the beginning of a new era in which human wellbeing and planetary health
are New York’s priorities. This will require New York officials to rethink much
of what they do. Nearly a century ago, in *New Jersey*
v. *City of New York*, the United States Supreme Court explicitly found
that issuance of a permit could not prevent a court from enjoining conduct
that created an environmental nuisance.77 Much the same way that a per-
mit is not a defense to a claim sounding in nuisance, a permit will similarly
not insulate ongoing conduct from constitutional scrutiny.78 “Article 19 thus
opens a pathway for reconsidering past governmental decisions that unduly
discounted environmental concerns or did not fully value environmental
rights. New York now has both the authority and the duty to ensure that
environmental rights are respected.”79 For that to happen, behaviors must
change in all branches of government. Every decision that impacts the envi-
ronment must be interpreted with Article 19 in mind—every permitting de-
cision must be consistent with the constitutional environmental rights.

76. N.Y. CONST. art. I, § 19.
78. *Fresh Air for the Eastside, Inc.* v. *State*, No. E2022000699, slip op. at 7 n.6 (N.Y. Sup.
water and a healthful environment are compromised by action that had previously been per-
mitted by a state agency or a local government, the fact that the conduct had been deemed
‘legal’ will not insulate it from judicial scrutiny and appropriate remedial orders by a court to
give the environmental rights effect . . . There is no ‘grandfathering’ of actions previously
permitted by government.”).
79. *This Changes Everything*, supra note 54.
Moreover, since the constitution was amended, New York has taken additional affirmative steps to encode environmental justice into state law. Most notably, in December 2022, Governor Hochul signed the Cumulative Impacts Bill into law. This statute requires that the Department of Environmental Conservation (DEC) assess existing disparities in environmental pollution as part of its consideration of any new permit application or permit renewal in an already overburdened community and to deny any permit that would increase those burdens.

In implementing the Cumulative Impacts Law, the Environmental Rights Amendment provides critical context to guide implementation of this new law. The Environmental Rights Amendment should also guide state and local interpretation of existing laws, ranging from the environmental equity provisions built into the Climate Leadership and Community Protection Act (CLCPA) to Article X siting decisions, and beyond. All these laws
must be interpreted in a fashion that advances constitutional environmental rights because the Environmental Rights Amendment creates an unambiguous mandate for protecting New Yorkers’ right to breathe clean air, drink clean water, and live and work in a healthy environment.

“Everyone exercising governmental authority, including agencies and local government, has an obligation to protect these environmental rights, to promote actions designed to preserve and enhance these rights, and to take affirmative steps to provide a healthy environment to all New Yorkers, including intervening when these rights are jeopardized.”

The Environmental Rights Amendment also gives regulators more flexibility to act in response to emerging environmental threats that might not yet be subject to regulation. Protecting clean air and water must therefore shape how all state law is interpreted. At every point that governmental decisionmakers exercise discretion under New York law, that discretion should be informed by the fundamental environmental rights enumerated in the constitution. As a result, state actors will have new grounds to justify more rigorous enforcement or to defend state environmental legislation from attack by polluting industry.

Individuals impacted by government actions with negative environmental impacts will have new access to courts. In particular, the new amendment will facilitate new environmental justice challenges—allowing overburdened communities to allege that governmental action (or inaction in the case of failure to enforce permits) unduly infringes on their environmental rights. They will have new grounds to challenge unequal protection under, or unequal enforcement of existing laws and regulations. The new amendment also requires a rethinking of public participation to ensure that those most affected by environmental decisions have a genuine opportunity for meaningful participation in a decision-making process that takes their environmental rights seriously.

State and local actors will need to ensure that their siting, transportation, development, and permitting decisions fully respect environmental

85. This Changes Everything, supra note 54.
86. This will be particularly useful when responding to threats posed by new chemical compounds. For example, had this constitutional amendment been in place earlier, it would have given New York clear grounds to take actions in Hoosick Falls to remedy PFAS water contamination once it became clear that the pollution was negatively impacting environmental rights. See generally Superfund Site: Saint-Gobain Performance Plastics Village of Hoosick Falls, NY, ENV’T PROT. AGENCY, http://cumulis.epa.gov/supercpad/curses/cstinfo.cfm?cid=0202702 [https://perma.cc/3Q33-9CQC]; Emily Fego, Five Years after Hoosick Falls Water Crisis, Lawmakers and Citizens Say Other Small Communities are Still at Risk, LEGIS. GAZETTE (Dec. 18, 2020), https://legislativedegazette.com/five-years-after-hoosick-falls-water-crisis-lawmakers-and-citizens-say-other-communities-are-still-at-risk/ [https://perma.cc/K8ZH-XWYN].
rights. The Environmental Rights Amendment requires these actors to strike a constitutional rather than pragmatic balance when environmental rights and property rights (or economic development proposals) conflict. They will need to develop new models for cost-benefit analysis, models that capture this new constitutional framework. For example, New York’s DEC previously interpreted SEQRA to allow permit denials “if the adverse environmental impacts cannot be favorably balanced against social and economic considerations.” 87 However, the Environmental Rights Amendment, in conjunction with the new Cumulative Impacts Law, now requires that DEC “put[] a thumb on the scale for protecting the environment” and protecting vulnerable communities. 88

There are many changes that need to be made in order to align state and local decision-making with constitutional standards. Coordination at the state level will be critical. The individual best situated to lead that coordination is the New York Attorney General, the self-proclaimed “People’s Lawyer” who “stand[s] up to the powerful on behalf of the vulnerable.” 89 As the public official elected statewide to head the Department of Law, she has both the mandate and stature to lead an environmental rights transformation, if she has the vision to do it. Below are some suggestions for how New York’s Attorney General might use her unique platform to ensure that New York fully respects the environmental rights of all residents.

V. UNIQUE ROLE FOR THE ATTORNEY GENERAL’S OFFICE IN IMPLEMENTING THE ENVIRONMENTAL RIGHTS AMENDMENT

The New York Attorney General has a two-pronged mission. First, she is the “guardian of the legal rights of the people of New York, its organizations, and its natural resources.” 90 Second, “[a]s the state’s chief legal counsel, [she] advises the executive branch of state government, and defends actions and proceedings on behalf of the state.” 91 In both capacities, the Attorney General is uniquely positioned to facilitate incorporation of environmental rights into governmental decision-making across New York. However, the Attorney General’s initial responses do not signal a willingness to take up this challenge.

88. Id.
91. Id.
It was particularly disappointing to see the New York Attorney General resisting this sea change in New York Law. When the first case under the Environmental Rights Amendment was filed, the Attorney General’s response was obstructionist. Rather than embrace her role as guardian of the legal rights of the people of New York, the Attorney General instead argued that the Environmental Rights Amendment imposed no direct duties on the State.92 The City of New York went even further, arguing that mere compliance with a permit was enough to meet the constitutional standard.93

As Judge John Ark noted in his opinion denying the motion, “the vigor of the State’s opposition to this lawsuit does not bode well for its enforcement of the Green Amendment.”94 In fact, Judge Ark explicitly rejected the Attorney General’s contention that the Environmental Rights Amendment did not change the legal baseline by ratcheting up the standards of what kind of environmental protection is required in New York.95 In a companion case, Judge Ark even more thoroughly refuted this interpretation, writing:

> [w]here a person’s rights to clean air and clean water and a healthful environment are compromised by action that had previously been permitted by a state agency or a local government, the fact that the conduct had been deemed “legal” will not insulate it from judicial scrutiny and appropriate remedial orders by a court to give the environmental rights effect . . . There is no ‘grandfathering’ of actions previously permitted by government.96

In March 2024, yet another New York court rejected the Attorney General’s claim that the Environmental Rights Amendment did not alter the scope of state discretion under law.97 In New York v. Norlite, New York

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93. The City of New York’s Memorandum of Law in Support of its Motion to Dismiss the Complaint at 16–17, Fresh Air for the Eastside, No. E2022000699.

94. Fresh Air for the Eastside, slip op. at 19.

95. Id. at 12, 14–16. On the other hand, if existing environmental standards are the measure by which constitutionality of activities are assessed, then as a practical matter, adding the Environmental Rights Amendment to the New York State Constitution will not have changed or accomplished anything. FEIN & OTTERBEIN, supra note 38, at 3.


97. Decision and Order at 4, New York v. Norlite, No. 907689-22 (N.Y. Sup. Ct., Albany Cnty. Mar. 6, 2024) (refusing to dismiss public-interest intervenor claim and rejecting the
Supreme Court Judge Kathleen O’Connor refused to dismiss a challenge to the DEC’s enforcement authority despite the state’s argument that nothing in the Environmental Rights Amendment “overrides DEC’s well-established enforcement discretion.”\(^98\) Instead, Judge O’Connor found that the “allegations that DEC is acting in violation of the Green Amendment directly involves an essential right enumerated in New York’s Bill of Rights, and by extension challenges DEC’s . . . discretion.”\(^99\)

As the guardian of the legal rights of the people of New York, and as the advisor to the executive branch, the Attorney General must do better. If the Attorney General takes the rulings quoted above to heart, her office could become a significant voice for advancing environmental rights. There are two steps her office could take: one immediately and the second in the near future. First, the Attorney General should immediately clarify who, within the Attorney General’s Office, has responsibility for overseeing and enforcing implementation of the Environmental Rights Amendment in New York. Second, the Attorney General should encourage the DEC and/or the City of New York to request an opinion about properly interpreting and enforcing New York laws in light of the Environmental Rights Amendment.

**VI. RECOMMENDATION 1: CLARIFY RESPONSIBILITIES**

Examining the Attorney General’s website through the lens of a New Yorker looking to protect their environmental rights, one thing jumps out immediately. Nowhere on the website is environmental justice, or even environmental protection, mentioned.\(^100\) There are no links to click and no contact numbers regarding constitutional environmental rights. A New Yorker concerned that their constitutional right to a healthy environment is being violated receives no guidance for who to contact or how to proceed. There is no contact person for implementing environmental rights, or for protecting the environment more broadly. This is a problem. In government, as elsewhere, things do not happen unless it is someone’s job to make them happen.

This silence on how to file a complaint related specifically to violations of environmental rights stands in sharp contrast with the clear online argument that state discretion to permit the Norlite facility could not be challenged under the Environmental Rights Amendment).

\(^98\) Id. at 5.

\(^99\) Id.

pathway the Attorney General’s Office provides for many other issues. For example, the Attorney General’s website is very helpful for New Yorkers seeking to file a claim because they were defrauded by a cryptocurrency purveyor, were steered into inappropriate investments by their advisor, were a victim of online fraud, experienced a personal data breach, did not receive proper wages from their employer, or faced harassment by their landlord. Indeed, the Attorney General’s website makes a praiseworthy effort to simplify the process of filing a complaint, and to help New Yorkers who have been on the receiving end of a host of illegal actions.

But who should New Yorkers turn to if their environmental rights have been violated? If a nearby permitted facility creates levels of odor, noise, or dust that interfere with New Yorkers ability to enjoy their property, what should those New Yorkers do? Even though the restriction that a facility not create a nuisance is included in every permit issued in the state, and . Indeed, the Attorney General’s website makes it easy for New Yorkers to file complaints about a wide array of concerns by including a comprehensive list of complaints with links on where to file. File a Complaint, Off. of the N.Y. State Att’y Gen., https://ag.ny.gov/file-complaint [https://perma.cc/AJG7-ZK7E]. But this list does not include environmental complaints.

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108. For example, Norlite’s Title V permit, issued by DEC under the Environmental Conservation Law, specifies that the facility may not emit air pollution that “unreasonably interfer[es] with the comfortable enjoyment of life or property.” Div. of Air Res., N.Y. State Dep’t of Env’t Conservation, 4-0103-00016/00048, Air Title V Facility Permit, Condition 24, at 219 (2019) https://extapps.dec.ny.gov/data/dar/afs/perms/401030001600048_r1_6.pdf [https://perma.cc/BW39-CE5A]. Similarly in Item D, the permit provides that it does not “authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.” Id. at 3. The High Acres Landfill permit, at issue in the Fresh Air for the Eastside, Inc. case contains identical provisions. N.Y. State Dep’t of Env’t Conservation, 8-9908-00162/00043, Air Title V Facility Permit, at 3, 27 (2016), https://extapps.dec.ny.gov/data/dar/afs/perms/899080016200043_r2.pdf [https://perma.cc/L6L3-EUWE].
repeated or flagrant violations of permit limits impact constitutional environmental rights, there is no obvious way to alert “the guardian of the legal rights of the people of New York.” If oversized trucks illegally travel down, or park or idle on, a residential street, causing air pollution, noise pollution, and danger, the Attorney General’s website offers nothing. This is true even though the Attorney General’s Environmental Protection Bureau webpage, buried deep in the Attorney General’s website, states “[i]f you are aware of any activities or conditions that may violate environmental laws or significantly harm the environment, we would like to hear from you.” With no contact information and no information about environmental rights, there is no clear pathway to share concerns that those rights may have been violated or to follow up on the information the Attorney General claims to want to hear.

The New York Constitution guarantees every New Yorker the right to clean air, clean water, and a healthful environment. As Judge O’Connor stated in her Norlite decision, “[t]he legislature expressed that the purpose of the Amendment is to ‘ensure that clean air and water are treated as fundamental rights for New Yorkers.’” At a minimum, that means changing the way the State enforces existing laws in communities where law breaking has routinely been tacitly allowed. Indeed, in rejecting the State’s assertion that the constitutional amendment did not affect enforcement discretion, the Fresh Air for the Eastside case made this impact of the Amendment explicit. Thus, in implementing the constitutional amendment, a good place to start would be making sure that existing laws and regulations intended to protect New Yorkers from negative environmental impacts are fully enforced, including regulations about where trucks can travel, who needs a Clean Water Act permit, and where polluting facilities can be located—in relation to schools, houses of worship, and residences.

Creating a clear pathway for people to share complaints and concerns would be the first step in that first pathway toward making sure that the constitutional amendment is being faithfully executed. If the needed lines of responsibility already exist within the Attorney General’s office, this is an

109. About the Office, supra note 90; File a Complaint, supra note 101.
111. N.Y. CONST. art. I, § 19.
112. Decision and Order, supra note 97, at 4 (citing Sponsor’s Mem., Senate Bill S528 (2021) and finding public interest intervenors stated a claim under N.Y. CONST. art. I, §19).
113. Fresh Air for the Eastside, Inc. v. State, No. E2022000699, slip op. at 16 (N.Y. Sup. Ct. Monroe Cnty., Dec. 20, 2022) (rejecting the state’s argument that it has unfettered prosecutorial discretion and noting that DEC “has not been granted the right to violate the Constitution”).
easy fix. Adding clear reporting, complaining, and information-gathering pathways to the existing website is relatively simple and, in the scale of governmental actions, virtually costless. It could be done tomorrow. In that sense, this recommendation involves the lowest of the low-hanging fruit with regard to implementing the Environmental Rights Amendment. However, the problem is likely that there are no such internal assignments of responsibility.

The Attorney General’s Office already has an environmental division that does important work to enforce environmental laws and regulations, and protect the environmental health of the people of New York. This division is the logical candidate for thinking through how implementation of the Environmental Rights Amendment will change business as usual across the state. Thus, as a priority matter, the Attorney General should establish clear lines of responsibility within this division for overseeing and vindicating constitutional environmental rights. Once this internal organization exists, the pathway for raising environmental (especially constitutional environmental) complaints should be clearly communicated to the public. The existing process for filing an array of online complaints with the Attorney General’s Office offers a ready model to follow.

VII. RECOMMENDATION 2: ISSUE OPINION(S) ABOUT IMPLEMENTING THE ENVIRONMENTAL RIGHTS AMENDMENT UNDER NEW YORK LAW

It is axiomatic that state actors may not abridge, evade, or weaken protections enshrined in the U.S. Constitution. By constitutionalizing environmental rights, the Environmental Rights Amendment altered what it means to enforce law in the State of New York. A wide swath of New York law, including the Environmental Conservation Law and permits issued thereunder, must be re-interpreted through the lens of what the Environmental Rights Amendment requires.

114. See e.g., Complaint at 2–4, Seggos v. AG Indus., No. EF2020-1432 (N.Y. Sup. Ct. Mar. 30, 2023) [https://ag.ny.gov/sites/default/files/court-filings/hauler_complaint_pdfa.pdf] (acting in her role as Chief Enforcement Officer to pursue allegations that an array of private actors violated the state’s waste handling laws).

115. See, e.g., Complaint at 1–6, State v. Raiszadeh, No. 804031/2023 (N.Y. Sup. Ct. Mar. 28, 2023) [https://ag.ny.gov/sites/default/files/court-filings/raiszadeh_complaints_exhibits.pdf] (alleging that landlords’ violations of local, state, and federal law have caused or contributed to lead poisoning of children in the Buffalo area.)

Under the New York Executive Law, the Attorney General has “charge and control of all the legal business of the departments and bureaus of the state.” In her role as the state’s chief legal counsel, New York’s Attorney General is uniquely situated to facilitate the rapid incorporation of environmental rights into decision-making across the state. She can advise the executive branch of state government about how to implement a wide array of state laws and regulations in a fashion that protects and respects the constitutionally guaranteed environmental rights and can offer guidance on how to remedy their violation.

One way to do this would be through Attorney General opinions issued in response to requests from state officers and/or the heads of various state departments, boards, and commissions. For example, the DEC might request a formal opinion from the Attorney General, or a local governmental attorney might request an informal opinion. Through these opinions, the Attorney General could offer guidance about how state and local officials should exercise their powers in compliance with the constitutional mandate. Although Attorney General opinions are advisory, they are usually “entitled to great weight.”

The Attorney General’s practice for issuing opinions interpreting whether proposed actions are consistent with the New York Constitution’s Forever Wild provision might offer a model. For example, to clarify which kinds of proposed activities would implicate constitutionally guaranteed environmental rights, regulators could request an opinion from the Attorney General advising whether a particular proposed project comports with the amendment.

Of course, these opinions are only as good as the Attorney General who issues them. Over the 150 years since the Forever Wild provision has been part of the New York Constitution, New York Attorneys General have provided inconsistent advice about what is permissible under the Forever

119. See 1996 N.Y. Att’y Gen. Op. 5, 5 (1996). Article XIV, § 1, also known as the “forever wild” clause, requires the following: “The lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed.” N.Y. CONST. art. XIV, § 1.
Wild provision. All too often, this advice rested more on political motives than on sound legal bases. For example, in 1919, an Attorney General opinion authorized the cutting and removal of trees “to establish roads or paths or for the pleasure and convenience of the Forest Preserve visitors.” Yet two years later, the Attorney General opined “that the Conservation Commission could not authorize the cutting or removal of trees in the Forest Preserve for the purpose of dam reconstruction.” Similarly, in 1948, Attorney General Goldstein issued an opinion allowing removal of “browse” from the Forest Preserve. Yet just six years later, the same Attorney General issued an opinion characterizing Article 14 as “comprehensive and ironclad” and rejecting an extraction proposal on the ground that it would interfere with the spirit and plain language of Article 14.

More recently, the Forever Wild provision has been interpreted strictly. For example, in 1996, Attorney General Vacco concluded that issuing temporary revocable permits to a private power company for the installation of electrical cable on the beds of lakes within the Forest Preserve for the benefit of thirteen private residences would violate the Forever Wild provision.

Fortunately for New Yorkers experiencing environmental injustice, they need not rely exclusively on the Attorney General’s interpretations of the constitution to vindicate their environmental rights. The New York legislature has already begun taking steps to flesh out the contours of the constitutional environmental rights. For example, in Spring 2023, the legislature passed, and the governor signed, a Cumulative Impacts Law. In doing so, the legislature found that:

each community in the state should equitably share the responsibilities, burdens, and benefits of managing and solving the state’s environmental problems and the facilities necessary to accomplish such ends . . . [and that]

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122. Id. at 21; 21 N.Y. St. DEP’T REPS. 1, 412 (1920).
the state has a responsibility to establish requirements for the considera-
tion of such decisions by state and local governments in order to insure
equality of treatment for all communities.129

This law amended SEQRA to prohibit the DEC from issuing or renewing
a permit that may directly or indirectly cause a disproportionate and/or in-
equitable pollution burden on a disadvantaged community.130 Formerly, the
Agency’s internal guidance for SEQRA did not mention environmental jus-
tice, and indicated that the Agency could deny a permit if “the adverse en-
vironmental impacts cannot be favorably balanced against social and eco-
nomic considerations.”131 By contrast, the law now requires denial when the
proposed action would directly or indirectly contribute to environmental in-
justice.132 Implementing this new Cumulative Impacts Law necessarily in-
volves interpreting the scope of the constitutional rights guaranteed by the
Environmental Rights Amendment. This would be an ideal place for the At-
torney General to issue an opinion and clarify to the whole state what it
means to implement the Cumulative Impacts Law consistent with constitu-
tional environmental rights.133

CONCLUSION

As the clearly expressed will of the people vis-à-vis environmental
rights, the Environmental Rights Amendment both constrains and empow-
ers the state. The Amendment creates a floor below which environmental
protections cannot sink, and all laws will have to take account of that

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129. Id.
130. N.Y. ENV’T CONSERV. LAW § 70-0118 (Consol. 2023). The DEC is responsible for the
great majority of environmental regulation in New York. In addition to regulating sources of
water pollution, air pollution, mining, and hazardous waste, DEC directly manages state for-
est and other public lands. DEC also oversees implementation of SEQRA. SEQRA is a com-
prehensive statute that requires all state, county, and municipal bodies to consider and mit-
igate adverse environmental impacts likely to result from their discretionary actions.
131. N.Y.S. DEP’T OF ENV’T CONSERVATION, DIV. OF ENV’T PERMITS, supra note 87, at 3. SEQRA
establishes the process by which the state ensures that environmental factors are considered
early in the planning process, and that public concerns are aired. Under the 2023 amend-
ments, SEQRA does more than that. It now requires the state to deny permits that impose
an undue burden on disadvantaged communities. Implementing this law necessarily implics
the scope of rights guaranteed under the Environmental Rights Amendment.
132. N.Y. ENV’T CONSERV. LAW § 70-0118 (Consol. 2023).
133. Governor Hochul might consider invoking Section 63(8) of the Executive Law to
direct the attorney general to investigate structural environmental injustice in permitting as
a matter “concerning the public peace, public safety and public justice.” S.B. 53, 246th Leg.
Sess. (N.Y. 2023). The Governor might also issue an executive order along the lines of her
September 2022 sustainability order directing the New York State government to lead by
example on environmental rights. N.Y. Exec. Order No. 22 (Sept. 20, 2022).
environmental floor. This will be true for existing law, which may have to be reinterpreted to bring it into harmony with the Environmental Rights Amendment. But the Amendment does more than create a floor—it redefines the relationship between New Yorkers and their environment. Going forward, the Environmental Rights Amendment offers important guidance to New York’s legislature as it debates a wide range of new legislation across a host of topics including elimination of structural racism, criminal justice reform, public education, transportation and energy needs, housing and development, and climate change. Environmental equity provisions like those built into the Climate Leadership and Community Protection Act will become the standard for how to move forward with legislation that affects and concerns the environment.134

134. S.B. 6599, 2019–2020 Sen., Reg. Sess. (N.Y. 2019). In the education context, the New York Court of Appeals recognized a correlation between funding and the educational opportunity rights promised by the state constitution. Campaign for Fiscal Equity v. State, 801 N.E.2d 326, 333 (N.Y. 2003) (finding that the state’s failure to provide adequate funding to ensure that students received a “sound basic education” violated the New York constitution). This principle connecting state funding to the realization of constitutional rights can be helpful to understand state duties under the Environmental Rights Amendment, particularly in light of the CLCPA’s emphasis on funding equity as a vehicle for transformative environmental justice. S.B. 6599, 2019–2020 Sen., Reg. Sess. (N.Y. 2019) (specifying that disadvantaged communities must receive thirty-five percent of the benefits of spending on clean energy, and setting a goal that forty percent of benefits flow to disadvantaged communities). This provision became the model for the Biden Administration’s Justice 40 Initiative. See Biden’s New Environmental Justice Plan Makes Strides in the Right Direction but Gaps Remain, CLIMATE JUST. ALL. (Jul. 15, 2020), https://climatejusticealliance.org/bidens-new-environmental-justice-plan-makes-strides-in-the-right-direction-but-gaps-remain/ [https://perma.cc/X7WS-Q7Y3].