State Constitutions in the Woods

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ABSTRACT

Before the adoption of environmental rights provisions beginning in the 1970s, most state constitutions did not contain provisions that protected the natural environment from degradation. Instead, to the contrary, many constitutions—especially in western states—contained policies that have long entrenched carbon-intensive infrastructures and have favored extractive industries. But starting in the early 1900s, a handful of states began amending their constitutions to incorporate environmental policy provisions. These additions helped preserve forested lands by giving state governments the power to respond to uncontrolled forest fires and adopt policies to prevent deforestation. Other amendments established fish and game commissions as constitutional entities, safeguarding them from political influence. These provisions have largely been ignored in legal scholarship, but they helped form the basis of the environmental constitutionalism that took hold with environmental rights provisions later in the twentieth century. In this Article, I tell the story of these important changes to state constitutional law—and argue that they are highly relevant in understanding the relationship between state constitutions and the environment.
INTRODUCTION

Environmental rights have been reinvigorated. Only a handful of state constitutions contain explicit environmental rights provisions, and historically, courts have interpreted them quite narrowly since their adoption in the 1960s and 1970s—but that may be changing. A renewed interest in the idea of environmental rights, as well as the use of these rights in court by environmental advocates, has pushed state supreme courts in Hawai‘i and Pennsylvania to breathe new life into their long-dormant provisions.

The moment seems right for environmental rights. For environmental justice advocates, it may be possible to read together environmental rights provisions and equal protection clauses, perhaps opening the door to


claims of environmental racism.\textsuperscript{7} For youth climate activists who have un-
successfully argued—in \textit{Juliana v. United States} and other cases\textsuperscript{8}—that the
federal and state governments have violated their right to a stable climate,
explicit environmental rights provisions may offer a new path forward.

In the last few years alone, many environmental rights advocates have
argued that the ground may have started to shift—and that there are now
new opportunities for environmental rights-based actions. New Yorkers rat-
ified a constitutional amendment in 2021 establishing an explicit right to
“clean air and water, and a healthful environment.”\textsuperscript{9} In Montana, a state
where the supreme court has only paid lip service to the explicit right in the
state constitution to “a clean and healthful environment,”\textsuperscript{10} a recently de-
cided case in state court struck down a statutory restriction that prevented
state agencies from considering climate change in environmental impact as-
sessments—decided on the grounds that it violated the youth plaintiffs’
rights under the Montana Constitution.\textsuperscript{11}

The infusion of environmental rights into state constitutional develop-
ment in the mid-to-late twentieth century represented a shift in tone and
direction from the earliest environmental provisions included in state con-
stitutions. As I have written elsewhere, many late-nineteenth-century con-
stitutions adopted in western states included a host of \textit{negative} environ-
mental policies—like a water rights regime that continues to incentivize
maximum use, eminent domain rules that valorized agricultural and extrac-
tive industries, and a tax system that was intentionally friendly to mining

\textsuperscript{8} \textit{Juliana v. United States}, 947 F.3d 1159, 1169–70 (9th Cir. 2020); Chernaik v. Brown, 475 P.3d 68, 79–81, 83 (Or. 2020); Aji P. v. State, 480 P.3d 438, 457 (Wash. Ct. App. 2021),
\textsuperscript{9} N.Y. \textit{CONST.} art. I, § 19.
\textsuperscript{10} Mont. Env’t Info. Ctr. v. Dep’t of Env’t Quality, 988 P.2d 1236, 1246 (Mont. 1999).
The decision can be found at \textit{Held v. Montana, CLIMATE CHANGE LITIGATION DATABASES, https://climategacechart.com/wp-content/uploads/case-documents/2023/20230814_docket-CDV-2020-307_order.pdf} [https://perma.cc/YKA2-4AEZ]. However, the outcome in \textit{Held} is far narrower
than many advocates have claimed—and certainly falls short of the original relief that the
plaintiffs sought. See, e.g., Quinn Yeargain, \textit{Against Environmental Rights}, 26 \textit{U. PA. J. CONST. L.} (forthcoming 2024).
interests. The durability of these provisions created a constitutional regime that locked in carbon-intensive policies and has tied the hands of policymakers. The shift, therefore, from these negative environmental provisions to environmental rights is dramatic.

Importantly, the addition of environmental rights provisions to state constitutions benefited from an intermediate step: state constitutional amendments in the early twentieth century that first adopted sustainable policies and created an infrastructure for positive environmental policymaking. Beginning in the early 1900s, state legislators began to imagine a new role for state constitutions in environmental policymaking. In many states, the strictness of state constitutions—which limited state legislatures’ powers to tax, spend, and borrow— inhibited innovation in policymaking. In others, many of the nascent agencies and departments intended to protect the environment were statutorily created, and thus vulnerable to contortion by industry-backed politicians.

Accordingly, state legislators (and voters) began to contemplate how to modify the rules of their state constitutions to adopt environmentally friendly policies more easily—though they frequently used a different vocabulary for these proposals—and entrench regulatory structures in their governments. During this period, legislators amended state constitutions to protect forested lands and to provide fish and wildlife conservation.

13. Id. at 14–15.
15. Christopher Serkin, Public Entrenchment Through Private Law: Binding Local Governments, 78 U. Chi. L. Rev. 879, 905 (2011) (“Anything that starves the beast—to use the conservative movement’s tax metaphor—limits the money available to future governments and therefore constrains future policy choices.”).
17. Infra Part I.
commissions with institutional independence. Today, many state constitutions contain some vestiges of these century-old provisions, with varying levels of usefulness and utility for modern environmental concerns.

In this Article, I explore the legal history and development of these provisions, with the goal of bridging the gap between the environmental provisions first adopted in western state constitutions and the environmental rights provisions adopted in the 1960s and 1970s. Part I begins by discussing the constitutional amendments that protected forests by both incentivizing conservation on the part of private landowners and by increasing the state’s power to manage those lands itself. I then analyze how state constitutional requirements of uniform taxation encouraged wasteful, inefficient forestry practices, and explain how state legislatures tweaked these rules. I also discuss the ratification of amendments that increased the state’s power to set aside land and manage it in a more sustainable manner.

Then, in Part II, I discuss the constitutionalization of fish and game conservation commissions, especially in southern states, in the mid-twentieth century. Many amendments establishing these commissions as constitutional entities were initiated by voters, usually as part of an organized effort

18. *Infra* Part II.

19. See, e.g., ALA. CONST. art. XI, § 219.01 (creating Game and Fish Fund); ARK. CONST. amend. XXXV, §§ 1–8 (creating State Game and Fish Commission) (West, Westlaw through July 2023); CAL. CONST. art. IV, § 20(a)–(b) (allowing for the creation of fish and game districts and creating the Fish and Game Commission) (West, Westlaw through Aug. 2023); FLA. CONST. art. IV, § 9 (creating Fish and Wildlife Conservation Commission); IOWA CONST. art. VII, § 9 (setting aside fishing and hunting license fees for conservation); LA. CONST. art. IX, § 7 (creating Wildlife and Fisheries Commission); MICH. CONST. art. IX, § 35 (creating Natural Resources Trust Fund); ID. at § 40 (creating Conservation and Recreation Legacy Fund); id. § 41 (creating Game and Fish Protection Trust Fund); id. § 42 (creating Nongame Fish and Wildlife Trust Fund); MINN. CONST. art. XI, § 14 (creating Environment and Natural Resources Trust Fund); id. at § 15 (dedicating portion of sales and use tax to conservation); MO. CONST. art. IV, §§ 40(a)–46 (creating Conservation Commission); id. at § 47(a) (dedicating portion of sales and use tax for soil and water conservation and for state parks); OKLA. CONST. art. XXVI, §§ 1–4 (creating Department of Wildlife Conservation and a Wildlife Conservation Commission); OR. CONST. art. XV, § 4–4(b) (dedicating portion of lottery proceeds to fish and wildlife conservation); PA. CONST. art. VIII, § 16 (creating Land and Water Conservation and Reclamation Fund); TEX. CONST. art. XVI, § 59(b) (authorizing creation of conservation and reclamation districts); W. VA. CONST. art. VI, § 55 (dedicating fishing and hunting permit and licensing fees for conservation); N. MII. I. CONST. art. XI, § 6 (creating the Marianas Public Land Trust) (LEXIS through May 2023); see also Jeffrey Omar Usman, *The Game Is Afoot: Constitutionalizing the Right to Hunt and Fish in the Tennessee Constitution*, 77 TENN. L. REV. 57, 77–81 (2009) (cataloging adoption of state constitutional rights to hunt and fish nationwide).
by conservation organizations. I explore how the constitutional independence of these commissions was strengthened by guaranteed funding through hunting and fishing licenses.

I. STATE PRESERVATION OF LANDS AND FORESTS

In the early twentieth century, the United States began to feel the effects of ecological devastation. Anthropogenic deforestation was ripping through the country, leaving previously forested areas barren. The poor management of forested lands throughout the country left communities and the natural environment vulnerable to wildfires.

State governments were poorly equipped to respond to these challenges. State constitutions locked up many of the tools that policymakers use today—like taxing, spending, and borrowing—following excesses and abuses in the nineteenth century. As a result, general rules were adopted that limited legislative discretion over how best to use these tools, preventing legislatures from striking different balances in different contexts. In some cases, like limitations on appropriations and debt, these rules constrained state governments’ power to directly act. In others, like uniform-taxation requirements, the rules caused wasteful and inefficient practices in the private sector. State legislators began to respond to these challenges by modifying the underlying constitutional rules and by granting themselves greater discretion to carve out exceptions for certain industries or practices.

With respect to publicly owned land, policymakers began to add muscle to the bare-bones administrative structure that existed up until this

21. Id. at 34 (“In the first two decades of the century, wildfire ran essentially unchecked through America’s forests.”).
22. Fino, supra note 14, at 965–79 (noting that state legislators and constitutional conventions responded to the Panic of 1837 and other crises caused by overspending on internal improvements by amending state constitutions to limit spending and taxing powers); see also Justin R. Long, State Constitutional Prohibitions on Special Laws, 60 CLEV. ST. L. REV. 719, 725–30 (2012) (noting a similar rationale for the adoption of prohibitions on special legislation).
26. See infra notes 52–54 and accompanying text.
27. See infra notes 55–59 and accompanying text.
point. Some states required that state-owned forests be managed in accordance with forestry principles and attempted to establish constitutional entities to manage the lands. In western states—where state governments held vast swaths of land “in trust” for the benefit of public schools—land commissions were professionalized and reorganized. In some states, the mission statements that motivated these commissions’ operation were re-calibrated.

In this Part, I address each of these changes in turn. In Section A, I discuss the original constitutional rules and limitations that constrained policymakers’ discretion in the early twentieth century and explore how (and why) these rules were softened. Then, in Section B, I discuss how state legislators and voters began reimagining the proper structure of the institutions created to manage state lands and forests.

A. Removing Constitutional Limitations

During the nineteenth century, state governments, eager to develop their economies, undertook risky and cost-intensive capital projects—most notably, canals and railroads. Many governments stretched themselves too thin, and when the national economy slowed during the Panic of 1837, companies working on canal and railroad construction went bankrupt, and state debt ballooned. In the decades that followed, as railroads were constructed across the country, many cities and towns loaned money to, and purchased stocks in, railroad companies. As these companies went bankrupt, “[t]he loans and stock became worthless[.]” Many state constitutional drafters responded to these scandals by including strict limitations on

28. Yeargain, supra note 2, at 51–52 (noting the ratification of constitutional amendments in Colorado and Oregon that modified the principles by which state boards managed state forests).
29. See infra Section I.B.
30. See infra notes 122–27 and accompanying text.
31. Sterk & Goldman, supra note 14, at 1306–10; Fino, supra note 14, at 965–74.
33. Sterk & Goldman, supra note 14, at 1313.
34. Id.; see also MORTON KELLER, AFFAIRS OF STATE: PUBLIC LIFE IN LATE NINETEENTH CENTURY AMERICA 165–67, 187–88 (1977) (asserting that railroad aid in particular produced distressing consequences that “squelched the postwar enthusiasm for subsidies”).
state and municipal debt, as well as imposing strict prohibitions on state power to engage in any works of “internal improvement.”

At the same time, and for much the same reason, drafters also required that all property be taxed in a uniform manner. Added “to prohibit preferential treatment of the railroads [and] land development corporations,” the uniformity requirements essentially required that, once the legislature set the property tax rate, the tax had to be applied uniformly to all property.

For policymakers in the early twentieth century seeking to advance environmental protections, these limitations were significant impediments. In Wisconsin, for example, state legislators passed the Forestry Law in the early 1900s, which, among other things, created a forest reserve and “provided for state management and restoration of northern Wisconsin’s logged-over pine forests.” But the passage of the law prompted concerns that it might constitute a forbidden “internal improvement” under the state constitution. Accordingly, the legislature proposed a constitutional amendment that would have allowed the state to appropriate “moneys for the purpose of acquiring, preserving and developing the water power and forests of the state.”

Though a majority of voters ratified the amendment, the state supreme court struck it down a few years later, holding that the amendment had not complied with the state constitution’s procedural requirements. And because the legislature then lacked any constitutional authority to enact the Forestry Law, the court struck it down, too. The effect of the court’s decision seemed primarily prospective, with the state’s environmental officials reporting that their operations would not be significantly affected by

35. Sterk & Goldman, supra note 14, at 1306–10; Fino, supra note 14, at 959, 965–74.
37. Myers, supra note 25, at 841.
38. Id. at 841–42.
40. Id. at 680–81.
41. Act of June 16, 1909, ch. 514, 1909 Wis. Sess. Laws 661 (proposing amendment to Wis. Const. art. VIII, § 10); see also Ranney, supra note 39, at 680 (discussing that the proposed constitutional amendment for internal improvements was ratified by voters in 1910).
42. State ex rel. Owen v. Donald, 151 N.W. 331, 341, 375-76 (Wis. 1915).
43. Id. at 331.
the outcome.44 In 1924, voters re-enacted a similar version of the amendment that had been struck down.45

Some states also sought to incur debt to respond to one of the greatest environmental threats of the day: forest fires. Responsibility for firefighting was frequently spread across counties and municipalities, resulting in poor statewide coordination.46 State forestry officials called for a unified, statewide approach to combatting forest fires,47 but constitutional debt limitations posed obstacles. Accordingly, some state legislatures proposed constitutional amendments that specifically authorized the state to incur debt to prevent and respond to forest fires.48 In New York, the passage of the amendment validated an existing state law of dubious constitutionality that allowed the Conservation Commission to obtain a “temporary loan to provide funds to suppress forest fires.”49 And in Minnesota, after its amendment passed, the legislature moved quickly to empower forestry officials to take proactive steps to establish firefighting infrastructure.50

State policymakers also moved to soften the requirement that taxes be applied uniformly to all property. The uniformity requirement prevented the legislature from statutorily establishing tax exemptions or adopting

44. F.B. Moody, Division of Forestry and Parks, in Biennial Report of the State Conservation of Wisconsin for the Years 1915 and 1916 69, 75 (1916) (“[I]t is possible for the State to hold the forest lands now possessed and to acquire other lands, provided such purchases are made to enhance the value of the [school land] trust. With the same object in view, it is possible to reforest portions of the so-called forest reserve. The Supreme Court decision did not, in any way, affect the management of the State Park properties, or lands granted to the State for forestry purposes.”).
47. Id. at 11 (“Forest fire protection in the newly organized fire districts should be under full State control, as is the case in the fire towns, and legislation to that end is recommended.”).
49. See N.Y. Conservation Comm’n, Seventeenth Annual Report for the Year 1927 198 (1928). The state Attorney General had previously suggested that the law was unconstitutional given the New York Constitution’s general prohibition on the state government’s power to contract debts without voter approval. Id.
different valuation methods for different types of real and personal property, which, in the forestry context, had particularly devastating results. The simplest explanation is that, if privately owned land was set aside for timber production, the value of the trees growing on the land was included in the calculation of the property value. As the trees grew from one year to another, the taxable value of the land increased, too. The owners of forested lands had an incentive to cut the timber from their lands as quickly as possible, which prevented them from adopting sustainable practices for managing the land.

Many forestry officials advocated for significant reforms to how forested lands were taxed. Some called for timberlands to be taxed like farmlands were (in that the value of the crops was not taxed as real property), while others called for the adoption of a separate classification of forested lands, or for the adoption of a severance tax. Other, narrower proposals urged the exclusion of young trees from taxation until they had reached maturity. Under these proposals, the owners of forested lands would have an

51. See Myers, supra note 25, at 841–42.
52. STATE OF NEW HAMPSHIRE CONVENTION TO REVISE THE CONSTITUTION 213, 220–21 (Granite State Press ed., 1938) [hereinafter 1938 NEW HAMPSHIRE CONVENTION] (“Under the constitution as it now stands you can classify growing wood and timber for the purpose of saying whether small timber shall be taxed or exempted. You can draw a line between the sapling and the full grown tree and exempt one and tax the other, but whatever you tax must be taxed at the general property rate, so we have no equitable rate of taxation for growing wood and timber that tends to encourage forestry. On the contrary, we have a system which encourages premature cutting of timber before it should be cut, and the slashing of timber whether it should be cut or not.”).
54. See id. at 76 (“The tendency at present is to increase valuation on forest lands more than formerly, as good growth is scarce, and if assessors tax it at its real value, according to law, owners at once realize the burden and are driven to cut it down.”); see also 1938 NEW HAMPSHIRE CONVENTION, supra note 52, at 213 (“Under the general property tax, in many instances the annual tax is equal to the annual growth. As a result of this practical confiscation by the existing method of taxation, timberlands, especially in the southern part of the state, have been cut again and again.”).
55. STATE OF NEW HAMPSHIRE CONVENTION TO REVISE THE CONSTITUTION 46–47 (Granite State Press ed., 1941).
56. Id. at 43.
incentive to adopt long-term, sustainable management practices. Many states adopted proposals to this effect.\footnote{59}

**B. State Land Management**

While it is generally reductionist to treat state governments in the United States as a monolith, this is especially true in the context of land management—where there is a meaningful divide between eastern and western states. In the West, the admission of states into the Union meant that Congress granted the new states much of the land owned by the federal government within their borders.\footnote{60} For some of this land, the states were required to hold it in “trust” for the benefit of public schools.\footnote{61} As time went on, this “trust” obligation morphed from a loose, aspirational statement to a legally enforceable trust.\footnote{62} Accordingly, to ensure that they were meeting their obligations under the trust, western states had a functional need to create land commissions (both elected and appointed) in their constitutions\footnote{63} and to cabin their authority with strict rules regarding the conditions of selling and leasing these lands.\footnote{64}

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\footnote{59. \textit{Jack Stark, The Uniformity Clause of the Wisconsin Constitution, 76 Marq. L. Rev. 577, 615 (1993) (“[T]he 1927 amendment to article VIII, section 1, which allows differential treatment of forests and agricultural land, makes it possible to create constitutional property tax incentives for certain programs that are designed to prevent development by retaining land in its current condition. Those programs are the forest croplands law, the woodlands tax law, the managed forest land program, and the farmland preservation credit.”); Delogu, supra note 25, at 286 (“Wisconsin’s taxation of forest crop lands largely frees these lands from general property taxes but subjects the lumber crop to taxation at the time of severance (or harvest).”.”)}.  
\footnote{60. \textit{See e.g., Sally K. Fairfax et al., The School Trust Lands: A Fresh Look at Conventional Wisdom, 22 Envt’L L. 797, 806–07 (1992).}}  
\footnote{61. \textit{See id. at 806, 810.}}  
\footnote{62. \textit{Branson Sch. Dist. RE-82 v. Romer, 161 F.3d 619, 633–36, 643 (10th Cir. 1998) (“In enacting Amendment 16, Colorado’s voters sought to rewrite the management principles underlying their state’s school land trust, shifting the state away from its prior focus on short-term profit maximization toward a more sustainable approach focusing on the long-term yields of the trust lands.” The court found that this change does not breach Colorado’s fiduciary obligations arising out of the federal trust.”).}}  
\footnote{63. \textit{Quinn Yeargain, Administrative Capacity in Direct Democracy, 57 U.C. Davis L. Rev. 1347, 1371–74 (2023).}}  
\footnote{64. \textit{See, e.g., Ariz. Const. art. X, § 2 (1912); Colo. Const. art. IX, § 10 (1876); Idaho Const. art. IX, § 8 (1889); Mont. Const. of 1889, art. XVII, §§ 1–2; N.M. Const. art. XIII, § 1 (1911); N.D. Const. art. IX, §§ 5–6 (1889); Okla. Const. art. XI, §§ 2–5 (1907); Or. Const. art. VIII, § 5 (amended 1968); S.D. Const. art. VIII, § 2 (amended 2000); Utah Const. art. XX, §§ 1–2 (1895);}}
In the East, on the other hand, many state governments predate the existence of the United States. As such, they derived title to their land from their royal charters, not from Congress.\(^{65}\) In many others, even where Congress may have articulated an *intent* that certain lands be used for the benefit of schools, no formal trust was created.\(^{66}\) Moreover, in many of these states, the responsibility for divvying up the school-trust lands was delegated to local governments,\(^{67}\) with the state government only holding on to responsibility for a handful of ministerial tasks.\(^{68}\) Therefore, few of these states had reason to create constitutional offices to manage state land holdings in the nineteenth century.

Throughout the twentieth century, state land management underwent significant changes. In the South, though some states created local forestry districts,\(^{69}\) the greatest changes came from adding state foresters (or forestry commissions) into state constitutions.\(^{70}\) Many states required officials to manage state-owned forests in compliance with “forestry principles.”\(^{71}\) At the local level, municipal power to acquire land for preservation as parklands increased.\(^{72}\)

The greatest changes took place in western states, however, where voter-approved and -initiated amendments reshaped the structure of state land administration. Two primary sets of proposals were put to (or proposed by) voters in the twentieth century: (1) the creation of new institutions, or modification of existing institutions, managing state lands and (2) changes to the powers of land management institutions, including changes to rules governing their conduct.

First, though most states largely maintained their original systems of land management—e.g., elected land commissioners generally stayed


\(^{67}\) Yeargain, *supra* note 63, at 1372–73.

\(^{68}\) See id. at 1370–74.


\(^{70}\) See Barton H. Thompson, Jr., *Environmental Policy and State Constitutions: The Potential Role of Substantive Guidance*, 27 RUTGERS L.J. 863, 874 n.46, 876 n.60 (1996) [hereinafter Thompson, *Environmental Policy and State Constitutions*].

\(^{71}\) Id. at 876.

\(^{72}\) Act of July 15, 1911, ch. 665, 1911 Wis. Sess. Laws 1090; WIS. CONST. art. XI, § 3a (amended 1912).
elected, and land commissions were usually not dramatically reorganized—some states reformed their administration. Nebraska voters ratified a constitutional amendment in 1936 that abolished their elected Commissioner of Public Lands and Buildings. The state instead vested responsibility for state land management in the Board of Educational Lands and Funds, made up of the state’s elected executive officers, including the Governor. Voters then approved amendments in 1954, which converted the Board into a gubernatorially appointed one, and in 1972, which transferred responsibility for managing the income from state lands to the legislature.

Several proposals to reshape forestry management in the 1940s instigated controversy, which ultimately led to rejection by voters. In 1942, the California General Assembly proposed a reorganization of the State Board of Forestry, adding it to the constitution and requiring the gubernatorial appointees to be confirmed by the State Senate. While supporters argued that the proposed reform would make the Board more efficient and, by constitutionalizing it, would remove it from political pressures, opponents contended that its primary purpose was to remove the State Forester and employees of the Board from the state civil service system.

78. See Fred B. Wood, Proposed Amendments to Constitution: Propositions and Proposed Laws Together with Arguments 11–12 (1942); see also Explanation Given on 18 Propositions, L.A. Times, Nov. 1, 1942, at 2, [https://perma.cc/2DVP-F8ZE] (arguing that a number of conservation organizations supported the amendment, suggesting that its goal was not to weaken the protections afforded to state forests); see generally, Proposition No. 6 Gets Backing from Many Organizations, Ventura County Star, Oct. 21, 1942, at 9, [https://perma.cc/F267-VKFA].
In Washington, the state’s management of state lands and forests was fractured, with responsibility resting among the Board of State Land Commissioners, State Capitol Committee, State Forest Boards, State Parks Committee, and the Commissioner of Public Lands. Governor Monrad Wallgren pushed for the consolidation of these entities into a single State Timber Resources Board, which he would have chaired.80 The legislature ultimately approved the bill81 over the objection of the State Land Commissioner, who argued that the effort gave the Governor too much control over his office.82 After efforts to amend the legislation to include a role for the State Superintendent of Public Instruction on the proposed board, Superintendent Pearl Wanamaker and the Congress of Parents and Teachers launched a campaign against the bill.83 They successfully organized a referendum campaign and placed the bill on the ballot in 1946.84 The Parent-Teacher Association argued that “[t]he superintendent would be deprived of any voice at all in the sale of state-owned school lands worth tens of millions of dollars,”85 that the proposed consolidation placed too much power in a single appointed state officer (the state forester), and that it threatened the long-term stewardship of state forests.86 A group of unions, including the International Woodworkers of America and several unions within the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), defended the measure, arguing that having “seven separate state agencies handling public timber” caused “confusion,” and that in the name of efficiency, a single board should be

82. Plan Opposition to Timber Board, SPOKANE DAILY CHRON., Feb. 21, 1945, at 2, https://www.newspapers.com/image/563647094/ (“Before the measure went into the senate hopper, [State Land Commissioner Otto A.] Case declared it was a ‘move to control the land office.’”).
84. Id.
86. BELLE REEVES, A PAMPHLET CONTAINING INITIATIVE MEASURE NO. 166, REFERENDUM MEASURE NO. 26, REFERENDUM MEASURE NO. 27, CONSTITUTIONAL AMENDMENT 18–19 (1946).
created. The measure was defeated, but its argument ended up winning out in the long run. In 1957, the General Assembly consolidated all forestry boards and commissions into a newly created Department of Natural Resources, headed by the elected Commissioner of Public Lands.

Second, the rules under which land commissions operated were modified. Initially, and still in some states, these modifications sought to maximize profit by increasing the power of the commission to lease more land for greater extractive purposes. More recently, these modified rules have infused long-term sustainable management principles into state land management schemes.

Most western states held onto a greater percentage of their school trust lands than their eastern counterparts, which was likely a wise move in the long run, given how resource-rich western states are. Many constitutions in western states imposed relatively strict limits on how lands could be sold or leased, e.g., for what purposes, for how long (if leased), and how many acres the state could sell per year. Over the twentieth century, voters approved constitutional amendments—and initiated some of their own—that weakened many of these limits. As fossil fuel extraction and livestock grazing became more important to western economies, some state legislatures moved to expand the power of land commissions to lease state land for oil and gas drilling, coal mining, and grazing; to lengthen the maximum leases that the commission could authorize; and to increase the limit.

87. Id. at 17–18.
90. Yeargain, supra note 2, at 20–24; Fairfax et al., supra note 60, at 820–21.
91. E.g., IDAHO CONST. art. IX, § 8 (1889); MONT. CONST. art. XVII, §§ 1–2 (1889); N.D. CONST. art. IX, §§ 157–61 (1889); S.D. CONST. art. VIII, §§ 2–11.
on annual acreage sales. Voters almost always approved these amendments.

At play in these decisions was a long-held principle in school trust land management: maximize profit over almost all else. But in states like Colorado, Idaho, and Oregon, this principle has partly given way to environmental protection. In 1968, the Oregon legislature proposed a constitutional amendment that required the State Land Board to “manage lands under its jurisdiction with the object of obtaining the greatest benefit for the people of this state, consistent with the conservation of this resource under sound techniques of land management.” Proponents of the amendment noted that, under the law as it stood, the Board was restricted “to a single objective—to maximize its cash income,” and that it could not spend funds to improve the lands it held or to “set aside land for public recreation, parks or scenic purposes.” Voters agreed to the modification.

Then, in 1989, the legislature limited the power of the Land Board to sell or export timber from state lands “unless such timber will be processed in Oregon.” While the legislative drafters argued that the amendment was drafted to respond to log shortages in the state and to protect against mill closures, the Oregon Natural Resources Council argued that the ban “doesn’t do much,” given the small percentage of logs exported from state

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92. E.g., H.J. Res. No. 3, 13th Leg., Reg. Sess., 1915 Idaho Sess. Laws 396 (increasing the annual maximum total land sale from 25 sections to 100 sections, and the maximum individual land sale from 160 acres to 320 acres); S.J. Res. No. 3, 26th Leg., Reg. Sess., 1941 Idaho Sess. Laws 484 (lowering the minimum price at which the lands can be sold from $10 per acre to $5 per acre); H.J. Res. No. 6, 30th Leg., Reg. Sess., 1951 Idaho Sess. Laws 658 (re-establishing the minimum price at which lands can be sold to $10 per acre); Act of Mar. 16, 1909, H.B. No. 146, 1909 N.D. Laws 341 (reducing interest rate for installment-sale contracts); Act of Feb. 28, 1919, S.B. No. 190, ch. 96, 1919 N.D. Laws 114 (expanding permissible uses of state land for leases); S. Con. Res. P, ch. 109, 25th Leg., Sess., Reg. Sess., 1937 N.D. Laws 193 (reducing interest rate for installment-sale contracts); S. Con. Res. H, ch. 100, 28th Leg. Sess., Reg. Sess., 1943 N.D. Laws 131 (establishing that original grant school and institutional land must be sold for no less than $10 per acre and laying out a payment plan for such sales).

93. See e.g., CHARLES J. DALTHORP, S.D. DEP’T OF FIN., SOUTH DAKOTA LEGISLATIVE MANUAL 1949 356 (1949) (noting passage of Amendment C).


lands. But, the Council argued, the amendment “is a first step in ensuring sustained yields” of forest products, and that “[b]y limiting raw log exports from state . . . and private lands, and encouraging better timber management on the better soils of privately owned forest lands . . . we can provide for a sustainable supply of timber for the future.” This amendment won voters’ approval, too.

In Idaho, the legislature opted for a narrower approach. In 1982, the legislature proposed a constitutional amendment that set out to make several changes to the Idaho Constitution. First, the State Board of Land Commissioners required to sell lands for no “less than the appraised price.” Though the original Idaho Constitution set a minimum price for all land sales at ten dollars per acre, a price keyed to market value will avoid “subsidizing individuals or institutions by selling lands for less than the appraised price when the sale of particular lands generates little interest or few bidders.”

Second, the Board was required to manage the portfolio of lands “in such manner as will secure the maximum . . . long term financial return,” eliminating the Idaho Constitution’s original requirement that the Board pursue “the maximum possible amount.” Some state officials considered this to require the Board to adopt “efficient, cost-effective far-sighted management practices.” Voters approved the amendment in a landslide.

100. Id. at 8.
101. Id. (providing the argument of Oregon Natural Resources Council).
104. IDAHO CONST. art. IX, § 8 (amended 1935).
107. Id.
108. Constitutional Amendments, supra note 105, at C-5. But see Constitutional Amendments, THE IDAHO STATESMAN, Oct. 30, 1982, at 6A (arguing that the amendment “is not needed because the State Land Board already has the authority and does manage state endowment lands . . . for maximum long-term gain.”).
The boldest change to trust land management principles has come in Colorado. In 1996, a voter group, Citizens to Save Colorado's Public Trust Lands, put an amendment on the ballot that reorganized the State Board of Land Commissioners and its basic powers and responsibilities.\textsuperscript{110} Specifically, the amendment restructured the Board's membership and modified its revenue-maximizing duty to one focused on long-term management by prioritizing "reasonable and consistent income,"\textsuperscript{111} "long-term productivity," and "sound stewardship" of the lands.\textsuperscript{112} The Board was specifically required to establish a "long-term stewardship trust of up to 300,000 acres," to incorporate sustainable management practices and principles into agricultural leases, and to manage the natural resources on the land in a manner that "will conserve the[ir] long-term value."\textsuperscript{113}

However, the changes in Colorado and Oregon notwithstanding, most of the environmental offices created in constitutions were designed to extract as much value as possible from the land and its resources, not to preserve the environment. Limitations on how those institutions even could be reorganized mean that their potential as environmental regulators is limited. For example, subsequent litigation over Colorado's 1996 amendment, though resolved in favor of the amendment's provisions,\textsuperscript{114} illustrates the complications of navigating a formal trust relationship.\textsuperscript{115} Moreover, given the extent to which these institutions exist as fully formed entities in state constitutions, as well as the economic value of fossil-fuel extraction from state-owned lands,\textsuperscript{116} iconoclastically minded voters face some inertia in attempting to meaningfully reshape them.\textsuperscript{117}

\textsuperscript{110} The citizen group was backed by then-Governor Roy Romer and was motivated by a series of "highly controversial land deals in the late 1980s and early 1990s." Charles E. Bedford, The New Colorado State Land Board, 78 DEN. U. L. REV. 347, 348 (2001); Romer: Profit Should Not Be Primary Focus of Land Board, DAILY SENTINEL, June 21, 1996, at 3A (the proposed amendment would convert the land board into a "five-member, unpaid board . . . appointed, with a professional staff.").


\textsuperscript{112} COLO. CONST. art. IX, § 10(1)(b) (amended 1996).

\textsuperscript{113} §§ 10(1)(b)–iii.

\textsuperscript{114} Branson Sch. Dist. RE-82 v. Romer, 161 F.3d 619, 643 (10th Cir. 1998).


\textsuperscript{117} See ELSABETH R. GERBER, THE POPULIST PARADOX: INTEREST GROUP INFLUENCE AND THE PROMISE OF DIRECT LEGISLATION 45 (1999) ("When groups propose initiatives to achieve direct modifying influence"—that is, affecting policy through a given policy-making mechanism to
II. CONSTITUTIONALLY INDEPENDENT REGULATORS

By the early twentieth century, overhunting and overfishing had started to seriously deplete wildlife populations in many states.118 At the time, one of the primary concerns of policymakers was the harm to the communities in their states that depended on hunting and fishing for recreation or sustenance—not the broader ecological effects of depleting species.119 In the late nineteenth century, some of the first fish and game commissions were statutorily created, but their operation was largely dissatisfactory to nascent environmental groups,120 which were usually associations of hunters.121 Accordingly, state legislatures—and, in states where voters could initiate constitutional amendments or statutes, voters122—began proposing the creation of constitutionally and politically independent fish and game commissions. Under the earliest proposals, which were largely developed in accordance with a model fish and game commission law proposed by the International Association of Game, Fish and Conservation Commissioners, commissioners were appointed by the governor to fixed terms and removable only for misconduct, thereby guaranteeing some amount of independence.123 After the initial creation of these commissions, governors and state legislatures attempted to tweak their structures.124 In the eyes of critics, the proposed changes would have brought the commissions under the thumb of the governor, reducing their independence.125

replace the status quo—“they face substantial hurdles at each stage of the process. . . . The costs of overcoming these hurdles are too high for many groups to absorb.”


119. Id. at xii.

120. See Yeargain, supra note 63, at 1390–94.


122. As Glen Staszewski has pointed out, referring to “voters” paints an inaccurate picture of the process by which initiated amendments and statutes are drafted and assumes too much agency on the part of individual voters. Glen Staszewski, Rejecting the Myth of Popular Sovereignty and Applying an Agency Model to Direct Democracy, 56 VAND. L. REV. 395, 399 (2003).

123. See infra notes 135–40 and accompanying text.

124. See infra notes 149–58 and accompanying text.

125. See infra notes 149–54 and accompanying text.
Separately, to ensure that the fish and game commissions were not dependent on support from the legislature for appropriations and financial support, legislators and voters proposed constitutional amendments that automatically dedicated all (or most) of the revenue from hunting and fishing licenses to the commissions.\textsuperscript{126} Though many of these proposals were raised during the mid-twentieth century, voters have continued to ratify similar amendments in the last few decades, as well.\textsuperscript{127}

In Section A, I explore the creation of “independent” fish and game commissions. I focus specifically on conservation groups’ successful use of the initiative power to craft commissions that were designed to their liking and explore the subsequent changes to these commissions by virtue of discrete amendments or the wholesale revision of state constitutions. Then, in Section B, I discuss the creation of guaranteed funding mechanisms for fish and game commissions as a means of ensuring their continued independence.

**A. Taking Fish and Game Commissions “Out of Politics”**

In the late nineteenth century, the first fish and game commissions were created to respond to decreases in wildlife populations.\textsuperscript{128} However, their lackluster enforcement of conservation laws led many early environmental groups to push for more active regulators.\textsuperscript{129} Fish and game commissions were largely staffed by political appointees of incumbent governors, causing total turnover when new governors were inaugurated.\textsuperscript{130} Many such appointees were also perceived, rightly or wrongly, as being cronies or friends of the governor and, as such, subservient to their whims.\textsuperscript{131} Popular election of fish and wildlife commissioners was rare. Alabama was the only state to have an elected commissioner, which it did from 1909 to

\begin{itemize}
\item \textsuperscript{126} See infra Part II.B.
\item \textsuperscript{128} Yeargain, supra note 63, at 1391.
\item \textsuperscript{129} Id. at 1392–94.
\item \textsuperscript{130} STEVE N. WILSON, ARKANSAS WILDLIFE: A HISTORY 74 (1998).
\item \textsuperscript{131} Id. (describing the Arkansas Game and Fish Commission as a “vassal[] of the patronage system”); see DIAN OLSON BELANGER & ADRIAN KINNANE, MANAGING AMERICAN WILDLIFE: A HISTORY OF THE INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGENCIES 167 (2002) (“The earliest of these officials [fish and game managers] were usually patronage appointees with skimpy education, if any, in resource management and little administrative or enforcement power.”).
\end{itemize}
1937, and Nevada had a seventeen-member elected State Board of Fish and Game Commissioners (one for each county) from 1949 to 1969.

Beginning in the 1930s, wildlife federations—which, in their earliest incarnation, were mostly groups of hunters and sportsmen—began pushing to take fish and game commissions “out of politics.” A model fish and game law drafted by former U.S. Senator Harry Hawes in 1934 on behalf of the International Association of Game, Fish and Conservation Commissioners provided a starting point. Under the Hawes Act, commissioners were appointed by the governor to staggered terms, and no more than half of the commissioners could be members of the same party.

Many wildlife advocates took Hawes’s act and ran with it. Prior to 1934, few fish and game commissions were established constitutionally. But in the decades that followed, Arkansas (1944), Florida (1942), Georgia (1943), Louisiana (1944), Missouri (1936), and Oklahoma (1956) added commissions like these to their constitutions. In 1940, California reformed its existing constitutional Game and Fish Commission to align its structure with the


134. supra note 121, at 942–50.


136. Id. at 89.

137. E.g., CAL. CONST. art. IV, § 20 (amended 1966); FRED B. WOOD, PROPOSED AMENDMENTS TO CONSTITUTION AND PROPOSED LAWS 16 (1930) [hereinafter 1930 CALIFORNIA VOTER PAMPHLET].

Hawes Act. In some cases, these amendments were initiated and drafted by voter groups themselves; in others, they were drafted by state legislators.

Regardless of the state, the argument was essentially the same: the statutory existence of the fish and game commission made it too vulnerable to “political influence” by the governor and state legislature. When conservation measures were dependent on the legislature for enactment, special interests were more likely to influence the process. The creation of an independent regulatory agency—added to the constitution to ensure that it would be beyond political pressure and so it could be delegated legislative power to adopt regulations—would help solve these problems.

When the proposals were backed by state conservation groups, they usually passed. Some opponents argued that the addition of the commission to the constitution, especially when it had a guaranteed funding source, was likely to create abuses of power. Now almost a century later, these arguments are remarkable to read. The opponents to constitutionally established commissions articulate a formalist-type opposition to the very existence of an independent administrative agency, arguing that the commissions would transcend the traditional tripartite separation of powers because “the power granted embraces executive, legislative, and judicial branches of government” and “would be a government within a government.”

Once the commissions were created, they certainly were not beyond tinkering by the political branches, but any proposed changes required a constitutional amendment. In Louisiana, where a sprawling number of

142. E.g., 1930 CALIFORNIA VOTER PAMPHLET, supra note 137, at 16.
143. E.g., 1940 CALIFORNIA VOTER GUIDE, supra note 139, at 19.
144. See e.g., WILSON, supra note 130, at 74–75.
agencies, boards, bureaus, commissions, and departments were established by the state constitution, the election of a new governor frequently prompted efforts to reorganize state government. The 1921 Louisiana Constitution created a Department of Conservation, headed by a gubernatorially appointed Commissioner of Conservation and tasked with “protect[ing], conserv[ing], and replenish[ing]” the state’s natural resources.148 Though the Commissioner enjoyed some independence from the Governor,149 the positioning of the Commissioner in the executive branch with only limited powers granted by the constitution meant that the “[l]egislature could not vest the conservation commission with legislative power[.]”150

As a result, the 1944 constitutional amendment split the Department in two: it created a Department of Wild Life and Fisheries with regulatory power over fish and game and vested control of “[a]ll other natural resources” in the Department of Conservation.151 Voters rejected a proposal in 1948 that would have essentially resurrected the old regime,152 and they rejected proposals in both 1956 and 1960 that would have abolished the Department and empowered the legislature to continue it statutorily.153 A similar amendment proposed in 1960 in Florida, which would have granted the legislature greater authority to control the Game and Fresh Water Fish Commission’s appropriations and expenditures, was also rejected by voters.154

148. LA. CONST. of 1921, art. VI, § 1; see id. at art. IX, § 7.
149. Saint v. Irion, 116 So. 549, 550–51, 1045–48 (La. 1928) (holding that the Louisiana Governor could only remove the Commissioner of Conservation for the causes specified in the state constitution).
In most states that saw the creation of fish and game commissions as constitutional entities, the commissions have remained in the constitutions, even as new constitutions have been adopted and articles completely re-written.\textsuperscript{155} Their powers have been modified over time but have otherwise remained largely consistent. In the time in which these commissions were created, they were usually just added to executive branch articles, or into a state constitution’s miscellanea, without any higher purpose or order.\textsuperscript{156} As states have adopted new constitutional text that has reorganized their executive branches into a set number of departments, the fish and game commissions were retained—though perhaps renamed—and organized into this new hierarchy, either as one of the executive branch departments\textsuperscript{157} or as an independent agency.\textsuperscript{158}

While this Section is about state constitutional changes that \textit{did} have an effect on the powers of environmental regulatory agencies like fish and game commissions, it is also worth considering a change that had \textit{no} effect at all, namely, constitutional amendments proclaiming a “right” to hunt and fish.\textsuperscript{159} Today, nearly half of all state constitutions ostensibly guarantee such a right,\textsuperscript{160} many of which have adopted model state constitutional language drafted by the National Rifle Association.\textsuperscript{161} But the effect of granting a “right” to hunt and fish is unclear. Most of the state courts that have


\textsuperscript{155} Fla. Const. art. IV, § 9 (creating Fish and Wildlife Conservation Commission); La. Const. art. IX, § 7 (creating Wildlife and Fisheries Commission); Mo. Const. art. IV, § 40(a) (creating Conservation Commission); \textit{but see generally} Ga. Const. art. V (1976) (omitting Fish and Game Commission); Ga. Const. art. V (1983) (same).

\textsuperscript{156} See, e.g., Tenn. Const. art. XI, § 13.

\textsuperscript{157} La. Stat. Ann. § 36:4(A) (including the Department of Wildlife and Fisheries as one of the twenty-one state executive departments); Mo. Const. art. IV, § 12 (including the Department of Conservation as one of the enumerated state executive departments).

\textsuperscript{158} See Fla. Stat. § 20.331(1) (2022) (noting that the Commission is located in the executive branch but has a “constitutional designation”); Advisory Op. to the Atty’ Gen. Re Fish & Wildlife Comm’n, 705 So. 2d 1351, 1355 (Fla. 1998) (noting that the commission “enjoys independent constitutional stature”).

\textsuperscript{159} Usman, \textit{supra} note 19, at 77–81 (discussing how these amendments furthered the agendas of firearm proponents).


interpreted such a “right” have found it to be of minimal significance, and in any event, most of the provisions affirm the state’s power to regulate hunting and fishing.

B. The Financial Independence of Game and Fish Commissions

At the federal level, the power of certain regulatory agencies to either self-fund or submit budget requests directly to Congress is critical to their political independence. The Consumer Financial Protection Bureau, for example, has an effective—but, in the eyes of the Fifth Circuit, constitutionally suspect—self-funding structure. For many fish and game commissions, which were deliberately established to avoid political pressures, securing an independent source of funding was necessary.

Given the obvious responsibilities of the fish and game commissions, identifying a source of revenue that existed independent of the legislature was also relatively easy. In most states, these commissions were (and remain) responsible for collecting hunting and fishing license fees. This was, after all, how the Hawes Act recommended structuring the responsibility. In most states, both legislators and voters proposed constitutional amendments that required these fees to remain with the commission for their own use (with some restrictions). In many cases, these proposals weren’t

163. Usman, supra note 19, at 85–86; Czarnezki, supra note 162, at 470–71.
165. Cmty. Fin. Servs. Ass’n of Am. v. Consumer Fin. Prot. Bureau, 51 F.4th 616, 623 (5th Cir. 2022) (“Congress’s decision to abdicate its appropriations power under the Constitution, i.e., to cede its power of the purse to the Bureau, violates the Constitution’s structural separation of powers.”).
166. E.g., Patricia A. McCoy, Inside Job: The Assault on the Structure of the Consumer Financial Protection Bureau, 103 Minn. L. Rev. 2543, 2548 (2019) (describing the Consumer Financial Protection Bureau’s “innovative” “design features,” including “funding outside the congressional appropriations process”).
167. See supra notes 118–127 and accompanying text.
separately voted on, but were instead packaged together with the establishment of fish and game commissions as constitutional entities.\textsuperscript{171} In a handful of other states, constitutional amendments guaranteed some additional sources of funds—for example, a specific percentage of sales tax revenue.\textsuperscript{172}

\section*{III. CONCLUSION: THE EFFECT OF EARLY ENVIRONMENTAL CONSTITUTIONALISM}

In the century after environmental provisions were first added to state constitutions, many, many more were added. By the mid-twentieth century, a sizable number of state constitutions contained policy statements ostensibly “requiring” the legislature to protect the environment or conserve natural resources.\textsuperscript{173} Beginning in the 1960s and 1970s, explicit environmental rights provisions were added.\textsuperscript{174} Today, though environmental provisions are not “one of the most common subject areas for state constitutional amendments to cover, voters still amend their constitutions to add environmental provisions with some frequency,” commonly in the form of adopting specific policies or authorizing bonds for environmental projects.\textsuperscript{175}

Gauging the effect of the earliest provisions is a challenging task. On the one hand, environmental conditions in the United States have largely improved from the devastation of the early twentieth century. Though deforestation, overhunting, and overfishing have not been altogether abated,
they have slowed and stabilized in the last century.\textsuperscript{176} It is difficult to trace this progress to the adoption of environmental amendments in the early twentieth century, especially given the outsized role of federal statutes in setting broader environmental policies. Nonetheless, the amendments adopted in the last century helped lay the foundation for new themes in environmental policymaking.

The amendments also reflected a desire to take aspects of state constitutional development—like constraints on taxes and debt and the establishment of specific institutions—and tweak them to respond to policy changes. These changes had an effect outside of the environmental context, and state constitutions increasingly began to incorporate specific policies in the mid-twentieth century, much to the chagrin of traditionalists.\textsuperscript{177}

Many of these policy-focused changes were centered around changing the role of the government, and few contemplated reorganizing the relationship between the government and individual people. The introduction of environmental rights to the state constitutional discourse at the end of the twentieth century, therefore, ultimately reflected the rights revolution more broadly.\textsuperscript{178} While there are serious reasons to be skeptical of the increasing use of rights-based language to alter policy through judicial action,\textsuperscript{179} it hardly seems possible for environmental rights to have

\begin{footnotesize}
\textsuperscript{176} MacCleery, supra note 20, at 24–29; see Belanger & Kinnane, supra note 131, at 61–62.

\textsuperscript{177} Frank P. Grad, The State Constitution: Its Function and Form for Our Time, 54 Va. L. Rev. 928, 931–32 (1968) (“There has clearly been a change from the nineteenth century attitude that government functions are primarily regulatory, that its function is to set the rules of the game and to enforce them so that they are not broken, but to stay aloof otherwise from the activities of the people. The shift in the twentieth century, and particularly since the 1930’s, has been an ever-increasing trend to view the state as a provider of services and economic security for the people.”).

\textsuperscript{178} Zachin, supra note 1, at 157 (“The creation of environmental rights near the end of the twentieth century demonstrates that America’s positive-rights tradition did not end with the New Deal. Instead, even during the ‘rights revolution’ when so much attention was focused on the meaning of America’s federal Constitution, activists and social movements continued to organize at the state level and continued to add positive rights to state constitutions.”).

\textsuperscript{179} See, e.g., Amanda Shanor, The New Lochner, 2016 Wis. L. Rev. 133, 200 (2016) (noting that courts affect “the state’s ability to affect public decision-making and enforce substantive policy goals through structuring choice and the people’s ability to govern by representational governance at all.”); see generally Jamal Greene, How Rights Went Wrong: Why Our Obsession with Rights Is Tearing America Apart (2021) (critiquing the focus on positive-rights development).
\end{footnotesize}
proliferated in a constitutional climate where environmental policies had not previously been constitutionalized.

Accordingly, we should recognize the early- and mid-twentieth century addition of environmental policies and institutions to state constitutional law not just as small tweaks to a handful of documents, but, instead as the first real effort to reorient the balance of constitutional development toward environmental protection.