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# Environmental Human Rights in New York's Constitution

By **Nicholas A. Robinson**

There is an environmental case to be made in favor of convening a constitutional convention. On the 200th anniversary of the birth of Henry David Thoreau, we can remember his admonition: “Live in each season as it passes; breathe the air, drink the drink, taste the fruit, and resign yourself to the influence of the earth.”<sup>1</sup> What has this to do with the Constitution?

New Yorkers suffer today from a deficit of environmental justice. Many have assumed that they are protected by environmental law reforms enacted after discovering Love Canal.<sup>2</sup> The residents of Hoosick Falls know better. Since before 2014, they have had to drink, bathe in, and cook with water laced with toxic perfluorooctanoic acid,<sup>3</sup> long before New York's government acted to protect them.<sup>4</sup> The lax oversight of the Saint-Gobain Performance Plastics Corporation's facility resulted in contamination of village wells and neighborhoods with wastes from producing its fire-fighting foams, coating additives, and cleaning agents. This July, the U.S. Environmental Protection Agency declared this area a superfund site.<sup>5</sup>

Across New York, environmental crises fester. The evidence is alarming. Long Island is dotted with 256 superfund sites, imperiling its three sole-source aquifers, which supply all of its drinking water.<sup>6</sup> Lobsters are entirely gone from Long Island Sound and fish are disappearing too.<sup>7</sup> In New York's counties from Westchester to Erie, persistent air pollution causes one in 10 of the state's citizens to suffer from asthma.<sup>8</sup> The South Bronx has among the worst asthma rates in America, compounding denials of civil rights there with environmental assaults.<sup>9</sup> Invasive species, such as bloody-red shrimp (*Hemimysis anomala*), are aggressively invading New York's upstate waterways, displacing native fish.<sup>10</sup> Expanding woolly adelgid (*Homoptera: Adelgidae*) infestations threaten death to all New York's hemlocks.<sup>11</sup> Numbers of songbirds are thinning across the state.<sup>12</sup> The volume of chemical pesticides used has increased enormously since Dr. Rachel Carson wrote *Silent Spring*.<sup>13</sup> Approximately

17,000 pesticides are in use today and virtually all New Yorkers carry trace amounts of pesticides in their bodies.<sup>14</sup> More than 50 percent of New York's beehive colonies died last year.<sup>15</sup> Moreover, amidst a warming climate, *Aedes aegypti* mosquitos are spreading to New York City's doorsteps, bringing Zika (*Flaviviridae, genus Flavivirus*) and other “new” viruses to the region.<sup>16</sup> Climate change promises additional diverse impacts. Sea levels inexorably rise, with 38 percent of New York City threatened with inundation in coming decades.<sup>17</sup> Extreme weather events range from intensifying summer heat<sup>18</sup> to increasingly heavy precipitation<sup>19</sup> and abnormally severe storms reminiscent of Super Storm Sandy in 2012.<sup>20</sup>

Across New York, state agencies and local governments have done little to strengthen capacity either to cope with predicted climate related impacts or to bolster ways to recover from climate-induced disasters. The Department of Environmental Conservation has a modest program offering technical advice.<sup>21</sup> Albany's timidity pales when compared to the proactive and often robust laws and programs of other nations. Columbia Law School provides these laws for all to study.<sup>22</sup> However, Albany pays scant attention to experts at Columbia or New York's other university centers.

Environmental degradation is bad and getting worse. The calamities noted above are not isolated or one-off events, and the list is longer. It seems like no one in New York government is “connecting the dots.” There was a time when citizens annually received a report about these trends. The United Nations still reports about the gathering crisis globally,<sup>23</sup> but within the United States official reporting is scant. The Council on Environmental Quality has not prepared its required annual environmental report since 1997,<sup>24</sup> and upon taking office President Donald Trump expelled CEQ from the White House. Avoiding their duty to warn citizens about environmental threats, political leaders benefit from public ignorance. Civic pressure on politicians is conveniently avoided: “out of sight, out of mind.”<sup>25</sup>

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Currently the federal government seeks to roll back federal environmental regulations.<sup>26</sup> State agencies, such as DEC, which rely upon federal financial assistance to implement environmental regulations, face cutbacks. The U.S. Environmental Protection Agency (EPA) is being reorganized and diminished.<sup>27</sup> While public interest litigation counters Trump administration violations of environmental statutes,<sup>28</sup> judicial action is slow, and meanwhile federal protection of the public is muted. Demoralized senior civil servants are retiring, and with it their experience.<sup>29</sup> In short, New Yorkers cannot rely on Washington to protect the environment in their state.

Albany once led the nation with its environmental conservation programs. No more. New York is not ready for federal withdrawals from protecting the environment. In recent years the legislature and governor have gradually slashed the funding for the Department of Environmental Conservation to the tune of \$32.3 million in 2008-09.<sup>30</sup> Rather than enabling DEC to cope with wide-ranging, environmental crises, this decreased funding is in inverse proportion to the state's escalating environmental crises. By way of illustration, DEC's budgets in 2011-12 were allocated \$1,040.6 million, in 2012-13 \$872.9 million,<sup>31</sup> and in 2014-15 \$870 million.<sup>32</sup> Comptroller Thomas P. DiNapoli reported in 2014 that "[t]he state Division of the Budget projects that total DEC spending will decline this year and in each of the next three years by a cumulative total of 25.9 percent from the SFY 2013-14 level."<sup>33</sup> Such reductions effectively nullify the guarantees in New York's Environmental Conservation Law.

The N.Y. Association of Counties has long complained about deferred maintenance of New York's aging water infrastructure: "deteriorating pipes, struggling wastewater treatment plants and water main breaks have become commonplace throughout the state. Comptroller DiNapoli recently issued a report indicating the State would need an estimated \$80 billion to repair, maintain and replace drinking and wastewater infrastructure in New York over the next 20 years."<sup>34</sup> While DEC's core agency budget did not increase, enactment of a bill<sup>35</sup> for long-delayed upgrades in water quality infrastructure it added \$228 million to DEC's budget in 2017-18.<sup>36</sup> However, there has been *no* bill to provide comparably adequate funding for maintaining air pollution control infrastructure, or for mitigating climate change emissions, or to curb the spread of invasive species. DEC's dedicated staff is left to do more with less, forced to practice a triage that betrays their agency's statutory duties.

In short, Albany is reactive, not proactive. For example, DEC issues many reports, as is mandated by law,<sup>37</sup> but neither DEC nor the governor offers a synthesis of what DEC does or cannot do. Sensible advice in the reports of the comptroller is disregarded.<sup>38</sup> The legislature does not act. The inattention to environmental regulation tips the scales in favor of "business as usual."

## A Convention Could Help

New Yorkers do not deserve environmental gridlock in Albany. The way to remedy this delinquency is found in Article XIX of the State Constitution. Every 20 years, voters are obliged to answer the question: "Shall there be a convention to revise the constitution and amend the same?" Each generation has the duty to decide whether their constitutional system is appropriate for their needs. Thomas Jefferson inspired adoption of this provision.

When polls open on November 7, 2017, voters should reflect on how Albany has failed to protect their environmental quality. A constitutional convention can insist that state government meets its basic responsibilities. It could recommend to the voters that New York's Constitution recognize a fundamental human right to the environment for all New Yorkers. This constitutional right to the environment would ensure that citizens in the future would not endure today's neglect.

Twice before, in similarly troubled times, the voters convened a constitutional convention to protect their environment. In 1894, corruption in state government was rampant and the state witnessed devastation to the forests in the Adirondack and Catskill mountains from unlawful timbering. The remedy was to require in the Constitution that nature within the Forest Preserve "*shall be forever kept as wild forest land. 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.*"<sup>39</sup> The Constitution further provided that this clear right would be enforceable in the courts by any citizen.<sup>40</sup> This fundamental constitutional reform has been observed, enhanced and enforced ever since. In 1911, New York became the first state to create a Department of Conservation as a cabinet agency.

Whenever opposition arose to the "Forever Wild" Forest Preserve, citizens invoked their right to petition courts to enforce the Constitution – and won. More than once legislators enacted proposed amendments that would weaken "forever wild." Voters rejected them all. Thanks to this clearly framed environmental right, explicitly enforceable in court, environmental degradation has never returned to the Forest Preserve.

The second great reforms came in 1969, when the Vietnam War generated anxiety and social unrest among New Yorkers. On the eve of the vast political protests that were to accompany the first "Earth Day" in 1970,<sup>41</sup> all of New York was grossly polluted. Acid rain killed off fish in Adirondack lakes.<sup>42</sup> In the worst "killer smog" incidents, one could see only two to three blocks in Manhattan.<sup>43</sup> Rivers had become open sewers across New York. Landfills were overflowing, often filling in precious wetlands. The convention took action, drafting a "Conservation Bill of Rights." When voters rejected that convention's over-all constitution, for reasons unrelated to the environment, the voters adopted this "Conservation Bill of Rights" by ballot in 1969. It appears as Article XIV, Section 4 in the current Constitution.

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After 1969, the Constitution mandated pollution control, protection of the environment, required natural resource stewardship, as well as preserving natural beauty and sustaining agricultural lands. Governor Nelson Rockefeller called on the legislature to observe this “Conservation Bill of Rights” through rapid enactment of new environmental laws<sup>44</sup> and by redesigning the Conservation Department as the Department of Environmental Conservation.<sup>45</sup> During the ensuing decade, many new state environmental laws were enacted and support was given to DEC for their implementation.

It is manifestly time, once again, for a constitutional convention to act. New Yorkers need to reclaim the high standard set by governors Theodore Roosevelt and Franklin D. Roosevelt. Albany has lost sight of its duty to safeguard the state’s environmental quality. In the past, governors Nelson Rockefeller and Mario Cuomo led New Yorkers with their clear environmental agendas and a strong DEC.<sup>46</sup> Incredibly since then, legislators and governors have tarnished this tradition by yielding to business lobbying that opposed environmental public health laws.<sup>47</sup>

Is it not time to fix Albany’s disdain for the environmental wellbeing of the state’s citizens? How can New Yorkers prevent backsliding and erosion of laws that should protect environmental health? *The answer lies in establishing a constitutional right to the environment.* Other states, such as Pennsylvania, Montana, and Hawaii, provide a right to the environment, which would make such neglect unconstitutional. Additionally, 174 national constitutions abroad provide the right to the environment,<sup>48</sup> and worldwide it is customary for courts to enforce this right. Last June, Pennsylvania’s Supreme Court ruled that the Constitution’s environmental right obliged the Commonwealth to deploy revenues from oil and gas leasing for environmental protection.<sup>49</sup>

Pennsylvania’s Constitution’s environmental right (Art. 1, Cl. 27) is a model for what New York could provide:

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.

It is high time that New Yorkers had a proper right to the environment. The existing “Conservation Bill of Rights” – good in its day – has not been sufficient to prevent or anticipate today’s environmental crises.<sup>50</sup> Some in Albany’s legislature seem to agree. Last spring, Assemblyman Steve Englebright won adoption of a relatively narrow<sup>51</sup> constitutional amendment that would establish a right to clean air and water, by a vote of 103 to 27,<sup>52</sup> but this proposal is now held up in the Senate.<sup>53</sup> It could take three or more years before this sort of amendment – if at all – is ever submitted to the voters. Meanwhile state officials watch the environment degrade, and citizens have no constitutional right to enforce.

New York deserves better. No one should be without a remedy when his or her water is poisoned or breathing air is harmful. An asthma victim’s rush to the hospital emergency room is evidence enough. Air pollution kills. No one should tolerate a state government that allows imposing such injustice on its people. Proverbially, do we not all live in Hoosick Falls? A livable environment is a human right. We trace the recognition of human rights in New York to the Charter of Liberties of 1215. This *Magna Carta*<sup>54</sup> set standards that we still observe: “To no one will we sell, to no one will we refuse or delay right or justice.”<sup>55</sup> When electoral campaign contributions result in Albany weakening environmental safeguards, this and *all* other rights that all New Yorkers enjoy are betrayed. This slippery slope will endanger “forever wild.” In 1217, *Magna Carta* provided the first guarantees of environmental rights.<sup>56</sup> In 2017, it is time for New York to do the same.

Of course, there will be opposition to recognizing an environmental right. The New York State Bar Association has not taken a position regarding the enactment of a constitutional right to the environment. Weighing pros and cons, its Report last year on the environmental aspects of the Constitution did state that:

[T]he narrow scope of [the Conservation Bill of Rights in] Section 4 in Article XIV is insufficient to address New York’s new environmental challenges. In 1894, the destruction of forests was deemed a crisis worthy of constitutional reform. The “forever wild” mandate was thus born. In 1969, pollution presented a comparable crisis. The “Conservation Bill of Rights” was thus created. Today’s analogue may be impacts associated with climate change...<sup>57</sup>

This past August a Task Force on the Constitutional Convention, convened by the NYSBA Section on Environmental and Energy Law, endorsed adopting an environmental rights provision.<sup>58</sup>

What difference might an environmental right make? Like all rights, a citizen could petition a court of law to have it enforced. In 2014 Hoosick Falls could have gone to court at once and not had to wait for more than two years before DEC or EPA responded. The right could ensure that the legislature appropriate at least the minimal funding needed to provide environmental security, just as it does for the State Police or other areas of public safety. Enforcing the environmental right could oblige New York authorities to prepare for climate impacts, for example by bolstering “resilience.”<sup>59</sup> Resilience preparation embraces green energy reforms. New York would benefit from having a more robust “green energy” renewables portfolio, as has been adopted in California<sup>60</sup> and Denmark.<sup>61</sup> Without the constitutional duties flowing from an environmental right, New York is hobbled by continuing inertia, combined with lobbying for “business as usual.”

Opponents of recognizing the right to the environment will be vocal. Vested interests oppose environmental regulation as being “bad for business,” and some politicians

uncritically echo this mantra as a “truth.” Contrary to this view, empirical evidence finds that regulation can stimulate competition, inventiveness, and economic growth.<sup>62</sup> Others would sacrifice the public commonwealth for their private, short-term gain. Commercial freeloaders, who

ernment” reforms made to the legislature have fallen on deaf ears. Had New York a public-spirited legislature, it would have anticipated and prevented the environmental health crises that now confront the state. It could have held budget hearings and decided the levels of funding needed

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avoid costs by passing their own pollution burden over to the ambient environment for all to endure, will object. From another quarter, some environmentalists oppose holding a constitutional convention out of a fear that, were a convention to be held, its delegates might propose weakening the “forever wild” safeguards for the Adirondack and Catskill Forest Preserve.<sup>63</sup> Others worry that the corruption, evident in the legislature,<sup>64</sup> would infect a convention.<sup>65</sup> However, the conventions of 1894 and 1967 demonstrate that elections produced public-spirited delegates who overcame narrow or even corrupt interests in order to embrace an effective constitutional reform.<sup>66</sup> The historical record demonstrates that such efforts, when tried in past conventions, always failed. For instance, each convention since 1894 preserved and enhanced “forever wild.” But even if unwanted amendments did emerge, New York’s voters could vote them down, just as they have each time that the legislature has tried to weaken “forever wild.”<sup>67</sup>

It is because a constitutional convention is a unique and one-time parliament that it has the independence to adopt an environmental human right. Delegates exercise their public duties in a highly visible forum. Delegates are less likely to be swayed by interests who profit from pollution because they do not need financial donations and are not running for re-election. Unlike Albany’s traditional decision-makers, convention delegates are not like assemblymen or senators or the governor, who invariably aim to aggrandize their powers (“turf”) as they jockey with each other over policies and budgets. Delegates do their work and the electorate votes upon their proposed Constitution directly.

The independence of convention delegates also enables them to address judicial reform. New York has one of the most antiquated court systems in America. Without an effective court system, there is no way for citizens to enforce their Constitutional environmental right, or other rights. Just as New York’s legislature and governor have discounted their environmental responsibilities, they also have failed repeatedly to address calls for court reforms.<sup>68</sup> Only a constitutional convention will act on pending bipartisan and professional court reforms.<sup>69</sup>

There have been many sensible proposals to restore “good government” in New York.<sup>70</sup> To date, “good gov-

ernment” reforms made to the legislature have fallen on deaf ears. Had New York a public-spirited legislature, it would have anticipated and prevented the environmental health crises that now confront the state. It could have held budget hearings and decided the levels of funding needed

by the DEC. Legislative oversight could have ensured that DEC was attentive to its duties, and did not allow crises to emerge such as at Hoosick Falls. It matters for the environment to have an active legislature.

Most fundamentally, a convention can address lapses in ethical behavior among legislators.<sup>71</sup> Sustaining an environmental right depends on ethical legislators. The convention can provide constitutionally defined standards for legislative conduct, with systems to apply them. Environmental stewardship depends upon having an honest and transparent legislature, capable of acting for the broad environmental public interests. To secure this, reforms should address fair electoral procedures for the state legislature. First, gerrymandering of legislative district lines in New York is alarmingly pervasive. As other states already require, the New York State Constitution should establish an independent commission to draw the lines for Assembly and Senate districts, to ensure fair representation of New Yorkers. Second, anyone who wins public office should be held to a “fiduciary” standard when representing citizens in the Assembly or Senate. The common law over centuries has defined the duties of a fiduciary. It is high time that elected legislative office holders be obliged to meet that standard. Without legislative reform, the laws and budgets needed to protect the environment will continue to be at risk.

A convention can begin restoring ecological integrity and environmental public health in New York. The degraded state of New York’s environment is the best evidence of the pressing need to reform the State Constitution. When we allow Albany to disregard its environmental duties, are we not in fact assaulting ourselves, our children and future generations? We learned in 1894 that with a strong constitutional guarantee, we could safeguard our “forever wild” Forest Preserve. Future generations have carried this mission forward. Today we are only two generations away from when we began our struggle in 1969 to clean up pollution, and we now see the weakness of our “Conservation Bill of Rights.” Our contaminated environment symbolizes a rot that weakens the framework of New York State government. Both are tainted and call out for attention. If saving our environment were the *only* reason for voting yes on November 7, it would be sufficient.

A convention can restore nobility to governing. There is merit in trying, for we cannot know if we shall succeed until we try. Emulate Teddy Roosevelt's gumption! We need not be resigned to environmental degradation. It is time for New York to reclaim its leadership by recognizing the human right to the environment. We can again, with Thoreau, enjoy resigning ourselves to what is good in the Earth. Should we fail to convene a constitutional convention to begin this task, we shall be complicit in today's mugging of our public health and ecological integrity. ■

1. Henry David Thoreau, *Walden, or Life in The Woods* (1854); he was born in 1817.
2. Poisoning of persons and property at Love Canal was discovered in 1977. Lois Marie Gibbs, *Love Canal and the Birth of the Environmental Health Movement* (2011, 3d ed.). Fifty years later, Love Canal is not effectively remediated, still releases toxic chemicals, and spawns new generations of lawsuits for personal injuries and damages. Carolyn Thompson, *Lawsuits: Love Canal still oozes 35 years later*, USA Today, Nov. 2, 2013, <https://www.usatoday.com/story/money/business/2013/11/02/suits-claim-love-canal-still-oozing-35-years-later/3384259>; Andrew C. Revkin, *Love Canal and Its Mixed Legacy*, N.Y. Times, Nov. 25, 2013, [www.nytimes.com/2013/11/25/booming/love-canal-and-its-mixed-legacy.html](http://www.nytimes.com/2013/11/25/booming/love-canal-and-its-mixed-legacy.html).
3. Brendan J. Lyons, *PFOA Water Pollution in Hoosick Falls*, Albany Times Union, Dec. 30, 2016, [www.timesunion.com/tuplus-local/article/Top-Stories-2016-PFOA-water-pollution-in-Hoosick-10825849.php](http://www.timesunion.com/tuplus-local/article/Top-Stories-2016-PFOA-water-pollution-in-Hoosick-10825849.php).
4. Hoosick Falls Water Contamination, EPA, <https://www.epa.gov/ny/hoosick-falls-water-contamination>.
5. EPA added this the area around this factory in Hoosick Falls, N.Y. to the Federal Superfund List (July 31, 2017). See EPA Adds Saint-Gobain Performance Plastics Site in Hoosick Falls, N.Y. to the Federal Superfund List, EPA, July 31, 2017, <https://www.epa.gov/newsreleases/epa-adds-saint-gobain-performance-plastics-site-hoosick-falls-ny-federal-superfund-list>.
6. Environmental cleanup sites on Long Island, *Newsday* (updated to March 31, 2017), <http://data.newsday.com/long-island/data/water/superfund>.
7. Allan R. Gold, *L.I. Sound Is So Polluted It Faces Long-Term Damage*, *Scientists Say*, N.Y. Times, July 8, 1990, [www.nytimes.com/1990/07/06/nyregion/li-sound-is-so-polluted-it-faces-long-term-damage-scientists-say.html](http://www.nytimes.com/1990/07/06/nyregion/li-sound-is-so-polluted-it-faces-long-term-damage-scientists-say.html).
8. For 2008 asthma rates in New York State from the Centers for Disease Control and Prevention, see [https://www.cdc.gov/asthma/stateprofiles/asthma\\_in\\_nys.pdf](https://www.cdc.gov/asthma/stateprofiles/asthma_in_nys.pdf); for 2016 asthma data, see the New York State Health Department data at [https://www.health.ny.gov/statistics/environmental/public\\_health\\_tracking/health/asthma.htm](https://www.health.ny.gov/statistics/environmental/public_health_tracking/health/asthma.htm); one tenth of New Yorkers suffer from asthma, with emergency room visits and hospitalization, lost school days for children, and mortality.
9. See South Bronx Environmental and Health and Policy Study (2004) of the Institute for Civil Infrastructure Systems, Robert F. Wagner Graduate School of Public Service, New York University, at [www.icisnyu.org/south\\_bronx/AsthmaandAirPollution.html](http://www.icisnyu.org/south_bronx/AsthmaandAirPollution.html).
10. Western New York PRISM, *Woody Red Shrimp*, [http://www.wnyprism.org/invasive\\_species/bloody-red-shrimp](http://www.wnyprism.org/invasive_species/bloody-red-shrimp).
11. New York Invasive Species Information, at [www.nyis.info/index.php?action=invasive\\_detail&id=24](http://www.nyis.info/index.php?action=invasive_detail&id=24).
12. Mel White, *North American Birds Declining as Threats Mount*, National Geographic, June 2013, <http://news.nationalgeographic.com/news/2013/06/130621-threats-against-birds-cats-wind-turbines-climate-change-habitat-loss-science-united-states>.
13. Rachael Carson, *Silent Spring* (1962).
14. National Report on Human Exposure to Environmental Chemicals, Centers for Disease Control and Prevention, <https://www.cdc.gov/exposurereport>.
15. "Winter and summer losses affect beekeeping operations of all sizes. Maximum winter loss rates reported by individual beekeepers reached 57% for commercial operations, 64% for sideliners, and up to 100% for hobbyists," *2016 Bee Keeper Tech Team Report* (Cornell and NYS Dep't of Agriculture) at p. 5 (2016). See also Kimberly Amadeo, *Colony Collapse Disorder Impact on the Economy*, The Balance, April 27, 2017, <https://www.thebalance.com/bee-colony-collapse-disorder-facts-and-economic-impact-3305815>.

16. Zika Virus, Centers for Disease Control and Prevention, <https://www.cdc.gov/zika/vector/range.html>.
17. See Brooke Jarvis, *When Rising Seas Transform Risk Into Certainty*, N.Y. Times Magazine, April 18, 2017, <https://www.nytimes.com/2017/04/18/magazine/when-rising-seas-transform-risk-into-certainty.html>; see also the interactive *New York Times* profile What Could Disappear, <http://www.nytimes.com/interactive/2012/11/24/opinion/sunday/what-could-disappear.html>.
18. Nadja Popovich and Adam Pearce, *It's Not Your Imagination. Summers Are Getting Hotter*, N.Y. Times, July 28, 2017, <https://www.nytimes.com/interactive/2017/07/28/climate/more-frequent-extreme-summer-heat.html>.
19. *Are recent heavy rain events due to climate change?* Cornell Climate Change, Cornell University, <http://climatechange.cornell.edu/are-recent-heavy-rain-events-due-to-climate-change>.
20. National Climate Assessment, Northeast (2014), <http://nca2014.global-change.gov/report/regions/northeast>.
21. Climate Change, Dep't of Environmental Conservation, [www.dec.ny.gov/energy/44992.html](http://www.dec.ny.gov/energy/44992.html).
22. See, e.g., Denmark, Sabin Center for Climate Change Law, Columbia Law School, <http://columbiaclimatelaw.com/resources/climate-change-laws-of-the-world-2/climate-change-laws-of-the-world-database/denmark>.
23. UN Environment Programme – Environment for Development, Capacity-4Dev, <https://europa.eu/capacity4dev/unep/document/geo-5-assessment-full-report> (2011).
24. See Section 202 of the National Environmental Policy Act, 42 U.S.C. § 4321; Annual Environmental Quality Reports, National Environmental Policy Act, [https://ceq.doe.gov/ceq-reports/annual\\_environmental\\_quality\\_reports.html](https://ceq.doe.gov/ceq-reports/annual_environmental_quality_reports.html).
25. Internationally, it has long been accepted that government shall provide the public with environmental information and public participation in environmental decision-making. See, e.g., UNEP – Principle 10 and the Bali guideline, UN Declaration of Rio de Janeiro on Environment and Development (1992), <http://www.unep.org/about/majorgroups/partnership/participation-information>.
26. Hiroko Tabuchi, *What's At Stake in Trump's Proposed E.P.A. Cuts*, N.Y. Times, April 10, 2017, <https://www.nytimes.com/2017/04/10/climate/trump-epa-budget-cuts.html>.
27. Brady Dennis and Juliet Eilperin, *Trump Signs Order at EPA to Dismantle Environmental Protections*, Wash. Post, March 28, 2017, [https://www.washingtonpost.com/national/health-science/trump-signs-order-at-the-epa-to-dismantle-environmental-protections/2017/03/28/3ec30240-13e2-11e7-ada0-1489b735b3a3\\_story.html](https://www.washingtonpost.com/national/health-science/trump-signs-order-at-the-epa-to-dismantle-environmental-protections/2017/03/28/3ec30240-13e2-11e7-ada0-1489b735b3a3_story.html).
28. These include suits by NYS Attorney General Eric Schneiderman over energy efficiency standards. See Kenneth Lovett, *N.Y. Attorney General Eric Schneiderman sues Trump administration over energy efficiency standards*, N.Y. Daily News, April 3, 2017, <http://www.nydailynews.com/news/politics/n-y-attorney-general-files-energy-policy-lawsuit-trump-article-1.3018177>.
29. Brady Dennis, *EPA Plans to Buy Out More Than 1,200 Employees This Summer*, Wash. Post, June 21, 2017, <https://www.washingtonpost.com/news/energy-environment/wp/2017/06/20/epa-plans-to-buy-out-more-than-1200-employees-by-the-end-of-summer-see-also-Alex-Lubben-Trump's-Biggest-Cuts>, Vice News, June 1, 2017, <https://news.vice.com/story/epa-staffers-are-being-forced-to-retire-or-face-massive-cuts>.
30. Progress Reports – Department of Environmental Conservation, NYS Division of the Budget, [https://www.budget.ny.gov/pubs/archive/fy0809archive/enacted0809/spendingReductions10-2008/spendRedux\\_DEC.html](https://www.budget.ny.gov/pubs/archive/fy0809archive/enacted0809/spendingReductions10-2008/spendRedux_DEC.html).
31. Environment and Budget, NYS Division of the Budget, <https://www.budget.ny.gov/pubs/archive/fy1213archive/eBudget1213/fy1213littlebook/Environment.pdf>.
32. Environment and Energy, NYS Division of the Budget, <https://www.budget.ny.gov/pubs/archive/fy1415archive/eBudget1415/fy1415littlebook/Environment.pdf>.
33. Environmental Funding in New York State, Dec. 2014, [https://www.osc.state.ny.us/reports/environmental/environmental\\_funding\\_nys\\_2014.pdf](https://www.osc.state.ny.us/reports/environmental/environmental_funding_nys_2014.pdf).
34. 2017 Budget Priority, Water Infrastructure, NYS Association of Counties, [www.nysac.org/files/Water%20Infrastructure-%20NYSAC%20Budget%20Priority%20FACT%20SHEET%202017\(1\).pdf](http://www.nysac.org/files/Water%20Infrastructure-%20NYSAC%20Budget%20Priority%20FACT%20SHEET%202017(1).pdf). A 2015 bill had also provided grants for water infrastructure improvements.
35. Water Infrastructure Act of 2017; see Clean Water Infrastructure Act of 2017, NYS Environmental Facilities Corporation, at <https://www.efc.ny.gov/Default.aspx?tabid=677#>.
36. Environment and Energy, NYS Division of the Budget, <https://www.budget.ny.gov/pubs/executive/eBudget1718/fy1718littlebook/Environment.pdf>.
37. See, e.g., Division of Environmental Remediation Annual Report, NYS Dep't of Environmental Conservation, <http://www.dec.ny.gov/about/53234.html>.

38. Thomas P. DiNapoli has documented many of the environmental threats to New Yorkers. See, e.g., Federal and New York State Regulation of Drinking Water Contaminants, Office of the NYS Comptroller, June 2017, <https://www.osc.state.ny.us/reports/environmental/drinking-water-contaminants.pdf>.
39. Article XIV, Section 1. See NYSBA Report, <https://www.nysba.org/ArticleXIVreport>.
40. Article XIV, Section 5. See NYSBA Report, <https://www.nysba.org/ArticleXIVreport>.
41. The first Earth day, History.com, [www.history.com/this-day-in-history/the-first-earth-day](http://www.history.com/this-day-in-history/the-first-earth-day).
42. Jerry Jenkins, Karen Roy, Charles Driscoll & Christopher Buerkett, *Acid Rain in the Adirondacks: An Environmental History* (Cornell Univ. Press, 2007).
43. Dina Spector, *This Old Picture of Manhattan Smog Looks Just Like Beijing Today*, Business Insider, Jan. 17, 2013, [www.businessinsider.com/manhattan-smog-photos-1966-2013-1](http://www.businessinsider.com/manhattan-smog-photos-1966-2013-1).
44. Between 1970 and 1972, the Conservation Law was revised and codified as the Environmental Conservation Law, Volume 17 ½ of McKinney's Consolidated Laws of New York.
45. See Nicholas A. Robinson, Ed., *New York Environmental Law Handbook* (NYSBA 1988), §1.1, "The Rapid Development of Environmental Law," pp. 1-4.
46. Governor Mario Cuomo financed DEC ably, while balancing the budget. See Governor Cuomo's Budget Director's commentaries in Dall W. Forsythe (Preface by Mario Cuomo), *Memos to the Governor: An Introduction to State Budgeting* (Georgetown Univ. Press., 2d ed., 2004). Through his budgets and bond acts, former Gov. Cuomo supported DEC at levels not sustained by his successors. For example, when I left DEC as its General Counsel in 1985, the DEC Division of Environmental Enforcement had a well-deserved reputation for securing compliance with the law; that division no longer exists. DEC enforcement statistics are below those of the 1980s although the Clean Air Act Amendments of 1990 and other laws necessitate increased enforcement activities.
47. Governor Andrew Cuomo is applauded for halting hydraulic fracturing in New York but criticized for efforts to divert \$500 million from the state's Revolving Loan Fund for Water Quality Infrastructure (a program established by Gov. Mario Cuomo) for financing the Tappan Zee Bridge reconstruction. Peter Iwanowicz, the head of Environmental Advocates has observed: "[The loan attempt] really strikes me as a clear indication of the ideology of this administration, having other priorities than a strong environment." He added that he sees a "lack of deep commitment that existed in previous administrations to ensure strong environmental protections." See Sarah Crean, *The Cuomo Record: Environment*, *Gotham Gazette*, Oct. 24, 2014, [www.gothamgazette.com/government/5397-cuomo-record-environment-first-term-governor-fracking](http://www.gothamgazette.com/government/5397-cuomo-record-environment-first-term-governor-fracking).
48. David R. Boyd, *The Environmental Rights Revolution* (2011).
49. *Pennsylvania Environmental Defense Foundation v. Commonwealth*, 10 MAP 2015 (June 20, 2017). See also *Robinson Township v. Commonwealth*, 63 MAP 2012 (December 24, 2013).
50. For example, Albany has failed to implement the existing constitutional mandate to provide for implementation of a "Natural and Historic Preserve" and has resisted citizen enforcement of the "Conservation Bill of Rights." See William R. Ginsberg, "The Environment," Chapter 15 in Gerald Benjamin, Ed., *The New York State Constitution – A Briefing Book*, pp. 221-29 (Nelson A. Rockefeller Institute for Government, 1994).
51. Air and water depend on broader ecological conditions, over successive generations. Pennsylvania's right, or rights like Hawaii's that embrace beauty, are more effective.
52. A. 6279 (Assemblyman Englebright, at <http://effectiveny.org/2017/04/26/from-politico-assembly-passes-environmental-bill-of-rights>).
53. S. 5287 (Senator David Carlucci, at <https://www.nysenate.gov/legislation/bills/2017/S5287>).
54. Charters & Constitutions, Historical Society of the New York Courts, [www.nycourts.gov/history/legal-history-new-york/history-new-york-courts-constitutions.html](http://www.nycourts.gov/history/legal-history-new-york/history-new-york-courts-constitutions.html).
55. *Magna Carta*, Chapter 33 in 1216, Chapter 36 in 1217.
56. Chapter 17 of the Forest Charter (1217) granted the "liberties of the forest to everyone" and declared everyone had a "duty to observe the liberties." The Crown was bound to secure environmental right. See Nicholas A. Robinson, "The Charter of the Forest: Evolving Human Rights in Nature," Magraw, et al., eds, *Magna Carta and the Rule of Law* (ABA 2014).
57. NYSBA Report on the "Conservation Article in the State Constitution," at p. 30 (August 3, 2016, adopted by House of Delegates November 5, 2016), [www.nysba.org/ArticleXIVreport](http://www.nysba.org/ArticleXIVreport).
58. NYSBA Section on Environmental and Energy Law Section TaskForce on the NYS Constitutional Convention (Chair, Prof. Katrina Kuh), August 2017, [www.nysba.org/Environmental](http://www.nysba.org/Environmental).
59. France's President Emmanuel Macron has endorsed a principle of resilience in the Global Pact for the Environment, which France is submitting to the UN General Assembly as a new treaty in 2018. See 23-24 June 2017: Global Pact for the Environment Introduced to the World, IUCN, <https://www.iucn.org/commissions/world-commission-environmental-law/events/23-24-june-2017-global-pact-environment-introduced-world>.
60. Renewables Portfolio Standard, California Energy Commission, [www.energy.ca.gov/portfolio/](http://www.energy.ca.gov/portfolio/).
61. The World Bank finds that Denmark had the most advanced green energy regime of any nation, and its economy prospers. See Denmark is leader in green energy, declares the World Bank, EFKM, <http://efkm.dk/aktuelt/nyheder/nyheder-2017/februar-2017/denmark-is-leader-in-green-energy-declares-the-world-bank/>.
62. Michael E. Porter and Claas van der Linde, *Toward a New Conception of Environment-Competitiveness Relationship*, 9 *Journal of Economic Perspectives* 97 (American Econ. Assoc., 1995); and Y. Rubashkina, et al., *Environmental Regulation and Competitiveness: Empirical Evidence on the Porter Hypothesis from European Manufacturing Sectors*, Bocconi Working Paper 69, July 2014, <ftp://ftp.unibocconi.it/pub/RePEc/bcu/papers/iefewp69.pdf>.
63. See, e.g., Brian Mann, *Would a state constitutional convention threaten NY's "forever wild" land?*, North Country Public Radio, <https://www.northcountry-publicradio.org/news/story/34255/20170706/would-a-state-constitutional-convention-threaten-ny-s-forever-wild-land>.
64. Citizens Union reports that since 2000, 33 legislators left office due to criminal or ethic issues. See Corruption Tracker, Citizens Union, [www.citizensunion.org/albany\\_corruption\\_tracker](http://www.citizensunion.org/albany_corruption_tracker).
65. Jerry Kramer, *Patronage, Waste & Favoritism: A Dark History of Constitutional Conventions* (2015, with Anthony M. Figliola and Maria Donovan) (recalled that, at the 1915 Constitutional Convention, when timber interests sought to cut back the 1894 Constitution's "Forever Wild" Forest Preserve's restrictions, the civil liberties lawyer Louis Marshall, a delegate, "took the floor and read out loud the name of every single delegate who had accepted money from the timber industry, as a way to get them to vote in favor of retaining "Forever Wild" protections, that way ensuring that the 1915 convention would continue with the state's strong environmental protections.").
66. The 1890s were times of crises. Environmental destruction was rampant as timber barons clear-cut the forests, leaving eroded hills and floods each spring that inundated the shores in Albany. Corruption in the legislature was blatant and had infected the Forest Commission as well. Extreme forest fires, erosion, flooding and loss of flora and fauna accompanied the extensive, and often unlawful, logging operations in the Catskills and Adirondacks. Frank Graham, Jr., in *The Adirondack Park* (1978), describes the public debates and legislative lobbying of the time that precluded legislative reforms: economic trade-offs between advocates of scientific forestry as opposed to unbridled timber exploitation; distress about unlawful corruption by lumbermen; concerns to preserve watersheds to ensure water supplies for many uses especially the flow for the Erie Canal; nature conservation demands that were encouraged by publication of *Man and Nature: or Physical Geography as Modified by Human Action* (1864) by George Perkins Marsh; vocal calls to preserve resources for fish and game, other recreation, health and for spiritual values. The 1894 convention cut through these debates by adopting the "Forever Wild" provision now in Article XIV Section 1.
67. For instance, at the constitutional convention in 1915, amendments to Article VII, Section 7, were proposed and adopted, but the voters defeated this proposed Constitution by vote of 893,635 to 388,966, so the 1894 Constitution's language remained in force.
68. See the proposals of the Fund for Modern Courts, at <http://moderncourts.org>.
69. NYSBA Report on the Judiciary Article of the State Constitution, Jan. 27, 2017, <https://www.nysba.org/judiciaryreport2017>.
70. League of Woman Voters, [www.lwvny.org/programs-studies/con-con/2017/Press-Con-con\\_032717.pdf](http://www.lwvny.org/programs-studies/con-con/2017/Press-Con-con_032717.pdf); Citizens Union, [www.citizensunion.org/vote\\_yes\\_for\\_a\\_new\\_york\\_state\\_constitutional\\_convention](http://www.citizensunion.org/vote_yes_for_a_new_york_state_constitutional_convention).
71. *Can a NYS Constitutional Convention Strengthen Government Ethics?*, Albany Law School Institute of Legal Studies, March 25, 2016, at <https://www.albanylaw.edu/centers/government-law-center/publications/Documents/Final%20materials%20Constitutional%20Convention.pdf>.