

The Maine Pine Tree Amendment: Frequently Asked Questions & Answers



The Pine Tree Amendment is Maine's Version of a Green Amendment: a Bill of Rights Amendment that recognizes and protects the rights of all people in the state, including present and future generations, to pure water, clean air and a healthy environment.

What is the Pine Tree Amendment?:

The Pine Tree Amendment is Maine's Version of a "Green Amendment." "Green Amendments" are self-executing provisions placed in the Bill of Rights section of a constitution that recognize and protect the inalienable rights of all people to pure water, clean air and healthy environments. Green Amendments serve as a check on government authority, and make clear government's duty, as trustee, to protect the state's natural resources for the benefit of all people, including future generations.

How is a Constitutional Amendment Better Than Legislation for Environmental Protection?

Our state and federal constitutions provide the overarching legal structure, principles and obligations to which all branches of government must conform. All government action, including the passage of laws, regulations, policies and programs are done in service to advancing their constitutional obligations – government officials cannot change or violate the constitution, they must honor and implement it. Passage of the Maine Pine Tree Amendment will ensure that every government official in the state will work to advance environmental protection at every level of the decisionmaking process, rather than wait until the end of the process when the focus is necessarily on acceptance and management rather than prevention.

Having the Pine Tree Amendment will help ensure that existing environmental laws and regulations are implemented to their full potential; will provide a basis for advancing new needed protections (whether legislation, regulation or government action); will provide a basis to secure protective government action when a gap in the law is identified (such as the case with PFAS contamination); and will strengthen the ability of communities to gain access to the courts (e.g. demonstrate standing or bring a constitutionally-based challenge) when their rights have been infringed upon by government action or inaction.

Will the Pine Tree Amendment Expand Government Power?

A properly crafted Green Amendment – i.e. Maine's Pine Tree Amendment – placed within the Bill of Rights will be a *limitation* on government authority, not a grant or expansion of authority. The Maine Pine Tree Amendment will protect environmental rights by limiting/preventing government actions or activities that – whether through direct government action or the action of others, or through government inaction – inflicts constitutional-level harm on protected environmental rights.

How Will the Maine Pine Amendment Affect Government Decisionmaking and Activities?

The Maine Pine Tree Amendment will encourage sustainable, environmentally protective, and innovative development, industry, and business growth. The Amendment will provide broad guidance that ensures government decisionmaking - substantively and procedurally - considers environmental impacts early in the process when prevention of pollution, degradation and environmental harm is most possible; requires equitable protection of all communities strengthening environmental justice; considers the protection of present and future generations; and considers science, facts and impacts as part of the decisionmaking process in order to fulfill the government's trust obligations. When all else fails, the Maine Pine Tree Amendment will provide a backstop that can be used by community, public, government and business interests to provide a check on government authority that overreaches and fails to protect environmental

rights. In addition, because it is self-executing, the Maine Pine Tree Amendment can help address community harms that have not been addressed by existing legislation, regulation or government action.

Why is a Green Amendment – aka The Maine Pine Tree Amendment – Beneficial for Environmental Justice Protection?

By recognizing environmental rights as individual rights that belong to all people, it becomes clear that government decisions and actions must protect these rights for *all people* and that government is not entitled to undermine/sacrifice/minimize the rights of one beneficiary community in order to enhance/protect the rights of another beneficiary community.

Including a trust obligation in the Amendment ensures that all government officials have a clear fiduciary duty to act with prudence, loyalty and impartiality for the benefit of all beneficiaries, including future generations. The trust obligation ensures a duty of equitable treatment owed to all communities and creates a constitutional obligation to consider cumulative impacts that includes how the new decision, when added to existing conditions, will affect the environmental rights of those impacted. Given that the fiduciary obligation is owed to all beneficiaries, it also prevents the government from justifying harms to one community in order to benefit another.

How Can Legislators Be Responsible for Protecting the Right to Clean Water and Air When These Are Not Entirely Within the Control of Any One State?

Rights enumerated in the Bill of Rights are inalienable rights that the people reserve unto themselves to be protected from government infringement. Just as with other rights in the Bill of Rights, government has a duty to take what actions it can to protect these rights within its jurisdiction and to ensure that its own actions do not induce, garner or allow for infringement. But just as government officials in one state do not have the power to prevent acts or activities outside the boundaries of their jurisdiction that might overreach and affect constitutional rights in another jurisdiction, the same holds true for environmental rights. Each state is bound to take what action it can to respect and protect the environmental rights of the people within its jurisdiction and to ensure that its actions or activities do not result in infringement. They are not duty bound (nor are they necessarily able) to take or prevent actions outside of their jurisdictional boundaries (e.g. state borders) in order to address/prevent infringement in other jurisdictions (e.g. states).

Will the Constitutional Language Harm Economic Development & Job Creation?

A constitutional environmental right will encourage sustainable, environmentally protective, and innovative development, industry, and business growth. It will also provide a powerful incentive for government officials to render decisions and advance businesses in ways that accomplish economic and business objectives, while at the same time protecting water, air, soils, food, forests, wetlands, climate and other natural resources critical to sustaining healthy, safe and successful lives and economies.

What States Have Green Amendments Currently?

Only Pennsylvania and Montana have constitutional language that fulfill the definition of a Green Amendment. Both states have state Supreme Court rulings that interpret and apply the constitutional language in keeping with the legal interpretation and application of other constitutional bill of rights/declaration of rights provisions. (To learn more, see the Green Amendment checklist at: https://www.forthegenerations.org/wp-content/uploads/2020/04/FTG_Checklist-2020-04.pdf)

How Are Green Amendments Affecting Environmental Protection in Pennsylvania and Montana?

PA & MT Green Amendments have been used to check legislative overreach that would prevent, waive or undermine state or local protections from fracking; prevent harmful gold mining operations; advance drinking water protections from PFAS contamination; prevent state legislators from raiding environmental protection funds; require consideration of science and impacts before permitting environmentally damaging operations; secure cleanup of toxic contamination and more.