COLORADO RIGHT TO A HEALTHY ENVIRONMENT AMENDMENT

FREQUENTLY ASKED QUESTIONS

DO ANY STATES CURRENTLY GIVE CONSTITUTIONAL ENVIRONMENTAL RIGHTS PROTECTION ON PAR WITH THE COLORADO RIGHT TO A HEALTHY ENVIRONMENT AMENDMENT?

Yes, three.

Pennsylvania, Montana and New York have bill of rights/declaration of rights constitutional language that gives highest standing to environmental rights on par with other fundamental rights, including freedom of speech and property.

Pennsylvania and Montana 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.

New York's Green Amendment was added to the state constitution in January 2022, and so the case law is still developing and has yet to reach highest court consideration.

WHY DO WE NEED CONSTITUTIONAL BILL OF RIGHTS PROTECTION FOR OUR ENVIRONMENTAL RIGHTS AND OUR STATE'S ENVIRONMENTAL RESOURCES WHEN OUR STATE ALREADY HAS A WELL-DEVELOPED SET OF ENVIRONMENTAL PROTECTION LAWS?

To ensure protection of environmental rights is a priority whenever government acts.

While Colorado has a well-developed system of environmental protection laws, we also all have a significant number of devastating environmental problems including: air pollution harming human health, our national parks and wildlife; extreme weather, wildfires, illness and severe heat due to growing climate change Colorado contributes to; toxic forever chemicals contaminating Colorado drinking water; diminishing water volume in rivers and the environment needed to support communities, agriculture, nature and ecotourism; communities of color and indigenous communities continuing to be inequitably burdened by pollution with greater health, economic and community harm; and more.

It is clear there are limitations and gaps in existing laws that fail to ensure essential protections for all communities and that have not kept up with emerging contaminants, technologies or scientific findings. As we see in other areas of law, such as civil rights, these kinds of deficiencies in law that fail to protect inalienable human rights can best be addressed by the overarching protections constitutional rights provides.

Constitutional recognition of environmental rights will ensure enhanced and heightened government attention and protection of the environment every time government acts across all environmental issues; with government being constitutionally required to ensure that its actions and activities do not result in so much harm that environmental rights are infringed or denied, and with a mandate to ensure equitable protection across communities becoming a duty and obligation.

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IS THE LANGUAGE TOO VAGUE OR BROAD?

No.

Constitutional language is intentionally broad to ensure the right can be protected across all issues, including those that are unknown or yet to develop.

The language used in the Right to a Healthy Environment is characteristic of all bill of rights language in the Colorado Constitution. For example:

- Section 7 protects people from "unreasonable searches and seizures" – what is "unreasonable"?
- Section 10 promises that "every person shall be free to speak, write or publish whatever he will on any subject" – what does it mean to be "free to speak"?
- Section 13 states "The right of no person to keep and bear arms in defense of his home, person and property … shall be called in question"

HOW WILL THE TERMS OF THE AMENDMENT BE DEFINED?

Through the same process that defines all constitutional rights.

The newly protected environmental rights are legally self-executing, meaning that the language, standing on its own, can be directly relied upon by the public and the government to protect the recognized right.

But, as is the case with other constitutional rights, the legislative and executive branches of government can develop and implement laws and regulations that seek to help define the definition and application of the constitutional right in practice. The difference now is that because this is a right of the people, Coloradans will now have a seat at the table, and in those instances when the laws as written, interpretated or applied fail to protect the rights of the people and fulfill the constitutional obligations of government, impacted people will now have access to the courts to vindicate their environmental rights.

WILL THE COLORADO RIGHT TO A HEALTHY ENVIRONMENT AMENDMENT ENCOURAGE FRIVOLOUS LITIGATION?

No, the CO Right to a Healthy Environment Amendment will not support frivolous litigation.

There is nothing in the proposed language that supports or encourages frivolous legal claims.

There are multiple legal tools and codes of conduct that prevent frivolous litigation in Colorado – attorneys are prohibited from knowingly pursuing frivolous claims and can be subject to sanctions, fines or other ramifications – that will prevent misuse of the CO Right to a Healthy Environment Amendment.

In the 3 states with similar constitutional environmental rights protection ZERO cases brought have been dismissed as frivolous or deemed nuisance suits devoid of value.

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WILL THE COLORADO RIGHT TO A HEALTHY ENVIRONMENT AMENDMENT RESULT IN NEIGHBORS SUING ONE ANOTHER OVER THE CUTTING OF TREES, THE SMELL FROM BARBECUES, BECAUSE OF DOG POOPING ON THE LAWN; WILL IT REQUIRE THINGS LIKE ANGLERS TO WASH THEIR WORMS; WILL IT ENABLE PEOPLE TO SUE FARMERS OVER ODORS OR OTHER BUSINESSES THEY DON'T LIKE.

The CO Right to a Healthy Environment Amendment will not encourage, authorize or support arguments between neighbors or private individuals about how they use their property.

As with other Bill of Rights provisions, the CO Right to a Healthy Environment Amendment is focused on government action. Therefore, if an individual property owner undertakes individual acts that offend or upset their neighbor, the constitution will not provide the foundation for a neighbor versus neighbor legal claim.

WILL THE COLORADO RIGHT TO A HEALTHY ENVIRONMENT RESULT IN A RUSH OR ONSLAUGHT OF LITIGATION?

No, the CO Right to a Healthy Environment Amendment is not expected to result in a rush or onslaught of litigation. In fact, it can help avoid litigation.

In the 3 states with similar constitutional environmental rights protection:

- There has not been an excessive rush of litigation
- Zero cases brought have been dismissed as frivolous or deemed nuisance suits devoid of value
- Every case brought has been to address a serious issue of public concern
- Cases filed would have been brought anyway; the constitutional right simply adds one more cause of action or is raised in order to help secure proper interpretation and application of other laws involved in the case.

When properly used, the amendment will help avoid litigation while ensuring better government decisionmaking and stronger protections with regards to the environment and associated public health, safety, quality of life, and property rights issues.

HOW CAN COLORADO GOVERNMENT BE RESPONSIBLE FOR PROTECTING THE RIGHT TO HEALTHY WATER, AIR, CLIMATE WHEN THESE ARE NOT ENTIRELY WITHIN THE CONTROL OF ANY ONE STATE, OR EVEN COUNTRY?

The CO Right to a Healthy Environment will ensure that when Colorado government officials take action, they are ensuring their actions do not infringe upon environmental rights and that they fulfill their constitutional duties.

The amendment does not require nor expect government to take actions beyond its legal authority. The fact that Colorado government officials do not directly control actions of persons or governmental entities outside of their state jurisdictional reach in no way changes their own constitutional obligation within the state.

This impact has been affirmed by case law in the 3 states with similar quality constitutional amendments recognizing environmental rights.

WHAT HAPPENS IF THERE IS A CONFLICT BETWEEN ENVIRONMENTAL RIGHTS AND OTHER PROTECTED RIGHTS, E.G. PROPERTY RIGHTS?

As with all other constitutional entitlements, government and the courts will balance the rights at issue and seek a pathway that best protects all the rights involved.

Passage of the CO Right to a Healthy Environment Amendment will ensure that environmental rights are added to the balancing of rights that government officials and the courts must weight during decision-making.

Example, in PA, Marple Township was able to rely upon the Pennsylvania constitutional amendment to ensure environmental concerns were part of the decision-making review required by the PA Public Utilities Commission for a proposed natural gas transfer station.

To the degree environmental pollution often infringes on the property rights of others, the amendment will help government better protect property rights that are undermined/impacted by government sanctioned environmental pollution or degradation emanating from a neighboring industrial operation or development.

WILL THE CO RIGHT TO A HEALTHY ENVIRONMENT AMENDMENT BE BENEFICIAL FOR ADVANCING ENVIRONMENTAL JUSTICE GOALS IN COLORADO?

Yes.

By recognizing that a right to a healthy environment belongs to all the people of Colorado, and placing that recognition in the Bill of Rights section, we are ensuring a governmental duty to protect environmental rights and environmental resources equitably across communities regardless of race, ethnicity, tribal affiliation or socioeconomic status.

WHAT HAPPENS IF THERE IS A CONFLICT BETWEEN ENVIRONMENTAL RIGHTS AND OTHER PROTECTED RIGHTS, E.G. PROPERTY RIGHTS?

No.

History has demonstrated that a healthy environment is essential for a healthy economy. Environmental protection supports economic vitality including increased property values, ecotourism, and clean energy jobs so we remain a state that attracts businesses and good quality workers who want to live amidst the beauty of Colorado.



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WILL THE MANDATES IN THIS AMENDMENT BANKRUPT LOCAL GOVT?

No.

The CO Right to a Healthy Environment will apply at the county and municipal level - this is one of its core values. But its implementation will be incorporated in to environmental reviews and decision making already carried out by local government.

As a result of the constitutional environmental rights considerations, the local government may identify improvements that will save the town money by avoiding costly community and environmental harms – such as better stormwater controls to prevent flood damages, avoided contamination of drinking water supplies, value added ways to protect green space that protects and enhances property values.

In addition, the constitutional consideration will place local government in a better position to defend against any challenges whether from industry, developers or community members.

WILL THE CO RIGHT TO A HEALTHY ENVIRONMENT AMENDMENT IMPACT CLEAN ENERGY PROGRESS?

The CO Right to a Healthy Environment Amendment will serve as a positive tool for advancing clean energy.

By creating a substantive right to a healthy environment, including the climate, & creating a duty on government officials to protect natural resources generationally; the amendment creates a positive mandate on government to address climate change.

In turn, because clean energy projects are essential for preventing climate change, the amendment provides a powerful, positive foundation for government support of clean energy – including project approvals, and government programs that support clean energy.

WHAT WILL BE THE EFFECT ON INDIGENOUS PEOPLE'S IN COLORADO?

The CO Right to a Healthy Environment Amendment will not infringe on indigenous sovereignty – it will neither apply to, nor require the compliance of sovereign indigenous leadership.

But the amendment will provide environmental rights protection to indigenous communities.

If indigenous communities are experiencing unconstitutional infringement of protected environmental rights recognized by the CO Right to a Healthy Environment Amendment, impacted indigenous people, communities and tribes will be empowered to challenge the unconstitutional infringement and seek restoration of their constitutionally protected right to a healthy environment.

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WHAT WILL BE THE IMPACT FOR FARMERS?

Given how deeply agricultural operations are impacted by adverse environmental conditions – such as water pollution, water availability, soil degradation, and the loss of pollinators due to ecological collapse – there is every expectation that the CO Right to a Healthy Environment Amendment will be beneficial for farmers and ranchers.

DOES THE AMENDMENT MEAN THAT COLORADO GOVERNMENT CAN NEVER INFRINGE ON THE CONSTITUTIONAL ENVIRONMENTAL RIGHT?

No.

As well-explained by the Montana Supreme Court, when a fundamental right articulated in the Bill of Rights/Declaration of Rights section is at issue, court review requires strict scrutiny, meaning that any demonstrated infringement can only withstand constitutional challenge if "the State establishes a compelling state interest and that its action is closely tailored to effectuate that interest and is the least onerous path that can be taken to achieve the State's objective."

(Montana Envtl. Info. Ctr. v. Department of Envtl. Quality, 1999 MT 248 (1999).)

