

The Maine Pine Tree Amendment: Frequently Asked Questions & Answers

The Pine Tree Amendment will add to Article 1 of the state constitution a section 26 that will read:

Environmental rights. The people of the State have the right to a clean and healthy environment and to the preservation of the natural, cultural and healthful qualities of the environment. The State may not infringe upon these rights. The State shall conserve, protect and maintain the State's natural resources, including, but not limited to, its air, water, land and ecosystems for the benefit of all the people, including generations yet to come.

How Will the Pine Tree Amendment Strengthen Environmental Protection in Maine?

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.

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 the Maine Pine Tree Amendment Beneficial for Environmental Justice Protection?

By recognizing environmental rights as individual rights in the Declaration of Rights section of the constitution that belong to all the people in Maine, it becomes clear that government decisions and actions must protect these rights for all people in Maine and must do so equitably; government will be constitutionally prohibited from undermining/sacrificing/minimizing the rights of one beneficiary community in order to enhance/protect the rights of another beneficiary community. Declaration of Rights placement also ensures informed decision-making is a constitutional pre-requisite to taking action that could infringe upon environmental rights. Informed decisionmaking includes understanding the pollution and industrial burdens a community already bears, and the impacts of proposed government action (both direct impacts as well as cumulative impacts in space and time with other environmental burdens), and acting upon that information in order to avoid unconstitutional violations, including the unconstitutional targeting and sacrifice of Communities of Color, Indigenous Communities and low-income communities.

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 Declaration of Rights are inalienable rights that the people reserve unto themselves to be protected from government infringement. Just as with other rights in the Declaration 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 Similar Amendments Currently?

The Pine Tree Amendment is Maine's Version of a "Green Amendment." "Green Amendments" are self-executing provisions placed in the Declaration 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 to protect the state's natural resources for the benefit of all people, including future generations.

Pennsylvania, Montana and New York 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 Declaration of Rights provisions.

In Pennsylvania, Montana and New York, "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.

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