

# PROPERTY RIGHTS FOUNDATION OF AMERICA, INC.

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## *Property Rights Alert Environmental Rights Constitutional Amendment*

March 22, 2017

Dear Friend:

Greetings to you and very best regards from Stony Creek!

We face a new challenge that I never imagined would be directed at property owners, state by state, after the members of Congress shot it down.

How could the following eloquent, high-sounding words present a threat to private property rights?

*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. New York State's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the State of New York shall conserve and maintain them for the benefit of all the people.*

These are the words of the **Environmental Rights Amendment of the Commonwealth of Pennsylvania**, which was adopted as a constitutional amendment over forty years ago and became Article 1 Section 27 of the State Constitution. However, the words you see above are altered to substitute the **State of New York** for the wording for Pennsylvania.

The reason that I am writing to you today about the Environmental Rights Amendment is that a plan is afoot to pass it this year in the New York State Legislature.

And, as you read this letter, please keep in mind that the results of litigation in Pennsylvania may inspire environmental groups in still other states to try to enact such an amendment.

The Pennsylvania Environmental Rights Constitutional Amendment sat virtually idle for decades, but for the last few years a battle raged in the *Robinson Township* litigation in Pennsylvania's high court, culminating in sequential decisions in 2013 and 2016 that threw out many articles of Pennsylvania law regulating oil and gas extraction.

For example, in the high court's 162-page first ruling, a plurality of judges found that several core provisions of the oil and gas law "violate the Commonwealth's duties as trustee of Pennsylvania's public natural resources under the Environmental Rights Amendment." The plurality of judges who ruled together were joined by another judge to make a majority to strike these provisions.

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These reversals of established law passed by the Pennsylvania Legislature have inspired environmentalists in New York State.

Let me explain the meaning of the Environmental Rights Constitutional Amendment.

**The Pennsylvania Environmental Rights Amendment has two parts:**

**Part 1 states: “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.”**

The sentence creates a constitutional right parallel to the rights guaranteed in the Constitution, such as Freedom of Speech, Freedom of Religion, and the Right to Bear Arms.

Here, the amendment means that a citizen has the right to go to court to defend his or her fundamental constitutional rights without a government agency bringing action and without enforcing a law or regulation such as zoning rules to protect the strands of environmental fundamental rights. This means that the citizen has “standing.”

A possibility is that the citizen could litigate against an industrial facility to enforce compliance with the citizen’s demand, whether or not the citizen has credible data to allege that the measured level of a chemical in groundwater, for instance, even if neither the state nor federal government has determined that significant pollution exists.

Or, for instance, a citizen or environmental group could use the Environmental Rights Constitutional Amendment to go to court to stop a project in the vicinity of a scenic spot or if the project would affect a place of historic interest, whether or not a public agency is required to hold hearings for the project.

This would enable environmental groups to target selected businesses, industries, home builders, loggers, or even a private person who is building a home.

Without a constitutional amendment similar to the one in Pennsylvania, environmental groups and activist citizens do not have the automatic right to be in court solely because something offends their judgment about clean air or water, or scenic, historic or esthetic values of the environment. The automatic right to have standing, to be in court, only applies for constitutional rights, such as the right to freedom of speech and freedom of religion.

**Part 2 states: The state’s public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the state shall conserve and maintain them for the benefit of all the people.**

This part of the Environmental Rights Constitutional Amendment is a statement of the **Public Trust Doctrine:**

The Public Trust Doctrine would redefine private property rights, making them a **remainder** left after the interests of the Public in the property are asserted. Compensation is not a factor when an asset on private property is expropriated under the Public Trust Doctrine.

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Under the Environmental Rights Amendment, natural wealth such as minerals, forests, and scenery, and even historic places, located on private property are entrusted to the people at large, with the state as the trustee. So the citizen as has the right under Part 2 to go to court to protect these assets, which are no longer strictly private.

With rare exceptions, the Public Trust Doctrine has no place in U. S. constitutional law.

A classical exception is the historic legal tradition that keeps navigable waterways open for use by the public. Another classical principle is the protection of government assets such as parks from alienation. In New York State, a park cannot be sold or given away without legislative approval as provided for in state law. In that situation, the officials are *entrusted* with the protection of the asset for the people of the municipality or the state.

In summary, taken together, parts 1 and 2 of the Environmental Rights Constitutional Amendment, give an environmental group or citizen activist license to use the courts to repeal laws, impose laws, or make new laws pertaining to the environment, scenery, historic places, or esthetics, without going through the legislature.

*In the September 28, 2016 Robinson vs. Commonwealth complex decision, the plurality of the court held that the Article 27 constitutional provision “obligated ‘the Commonwealth’ to act as trustee to conserve and maintain these and other public natural resources for the benefit of all the people in this and future generations. In requiring the Commonwealth to act in the capacity of trustee of public natural resources, the plurality determined that Article 1, Section 27 ‘speaks on behalf of the people, to the people directly,’ and therefore, granted to the people the right to directly enforce the Commonwealth’s trustee obligations.” (p. 14)*

### **The Plan to Pass the Environmental Rights Constitutional Amendment in New York**

***Just two months after the final Robinson decision***, on December 30, 2016, Environmental Advocates of New York, a group based at the state capitol, saw their intention to pass the Environmental Rights Amendment announced through the Associated Press. The news article began, “Environmental and public policy groups in New York are calling for a state constitutional amendment that guarantees residents a right to clean air and water.”

The wording of the article tied to two specific current developments. First, the group based their call for the Environmental Rights Constitutional Amendment on a wave of local concern and recent publicity about old industrial groundwater contamination in the area of Hoosack Falls, a town not far from the state capitol. The article pointed to video ads on the web site of Environmental Advocates which, it said, showed children from Hoosack Falls, “where water wells have been contaminated by an industrial chemical.”

And, the article glowingly pointed out that a new ruling based on the 1971 Environmental Rights Amendment to the Pennsylvania Constitution had just made it possible for municipalities to zone out shale gas development there.

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The article favorably quoted the powerful New York State Senator Liz Krueger, who represents a district far from logging, gas wells, or struggling little towns like Hoosack Falls. Senator Krueger's "Silk Stocking District" is known for Upper East-Side Manhattan residential wealth and commercial skyscrapers. She spoke in favor of "constitutional protection" so that "people have the ability to use our courts to get us to do the right thing."

It is thought by some that this year the first vote of the two required toward of the passage of the environmental rights amendment will quietly roll through the Legislature. A second passage by the Legislature would still be necessary next year. Of that vote were to succeed, it would be followed by a citizen referendum in the next election.

The environmentalist enemies of private property rights can win this year's amendment vote if we remain silent.

They cannot succeed if our voices are heard.

We must stand in the way of the radical redefining of constitutional rights to include environmental rights, and enforced in concert with a constitutionally established Public Trust Doctrine.

The full preservation of private property rights, irrespective of the issues that our state faces, must be preserved. This can only be guaranteed by preserving the orderly passage of legislation through our elected members of the legislature, not by allowing an environmental rights constitutional amendment to pass.

Please send me your ideas and thoughts. If your generous assistance for the work of the Property Rights Foundation of America® is possible at this truly critical time, you will have my immense appreciation.

With very best regards, again, to you and yours, and with humble gratitude for the honor of your participation in the mission of the Property Rights Foundation of America, Inc.

Sincerely,



Carol W. LaGrasse  
President

A copy of the latest annual financial report of the Property Rights Foundation of America, Inc., may be obtained from the organization or from the Office of the Attorney General, Charities Bureau, 120 Broadway, New York, N.Y. 10271.