

# Some states want to give you a constitutional right to a clean environment

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New Mexico's budget relies heavily on oil and gas revenue, but the state also bears the scars of generations of mining and drilling. So when Antoinette Sedillo Lopez, a former law professor and current

Democratic state senator, heard about the movement to add "green amendments" to state constitutions, it seemed a promising tool to address climate change and other environmental pressures in New Mexico.

"It's a beautiful state, but it's environmentally fragile," Sedillo Lopez said. "We're a state with a lot of extractive industries, and unfortunately, we're overreliant on it. Because we're so overreliant, that industry just dominates. And so, I saw this as a way to push back to have a real clear statement."

Green amendments, which establish in state constitutions the fundamental right to clean air, water and soil and other environmental priorities—including a stable climate—are making slow but steady progress around the country. New Mexico is among 15 states where such measures have been considered this year, and although the green amendment didn't advance out of a legislative committee, Sedillo Lopez said she'll reintroduce it in the future.

Green amendments go beyond existing environmental laws or regulations, said Maya K. van Rossum, a lawyer and the founder of Green Amendments For The Generations, a national nonprofit working to pass such amendments in all states.

That's because the measures are embedded in a state constitution's bill of rights, the section of the document that enumerates the fundamental rights of a state's residents. Three states currently have such amendments tucked into their constitutions: Montana and Pennsylvania, where they date to the early 1970s; and New York, where voters approved a green amendment in late 2021.

Sometimes known as environmental rights amendments, the measures are designed to prohibit the [state government](#) from infringing on the fundamental right to a clean environment. They can also help

communities establish legal standing "to insist that the government prevent actions that infringe upon their right to clean water, clean air, and a healthy environment," according to the National Caucus of Environmental Legislators.

In New Mexico, the green amendment under consideration would have asked voters whether they want the state constitution to say that residents "shall be entitled to clean and healthy air, water, soil and environment; a stable climate; and self-sustaining ecosystems, for the benefit of public health, safety and general welfare."

Perhaps because of their less concrete nature, the measures haven't drawn as widespread support as some other environmental legislation. The measures often draw opposition from manufacturing, mining and carbon-intensive industries; in New Mexico, the amendment also was opposed by an energy alliance that represents renewable energy and environmental advocacy groups.

It's up to states to define the specifics of their green amendments. In Montana, for example, the constitutional amendment establishes a right to a clean and healthful environment. It's the legal underpinning of a climate lawsuit by 16 young residents who argue that the state's energy policies violate their constitutional rights. That case, one of the few youth climate lawsuits to proceed in the courts, is set to go to trial in June.

In New York, residents near a landfill have filed lawsuits against the state and the New York Department of Environmental Conservation for failing to prevent conditions that degrade their constitutional right to a healthful environment.

Government officials are "constitutionally obliged to honor those rights, because they're constitutional rights," van Rossum said.

"So now they have to be sure that they're focused on prevention of pollution and degradation, because that's the only way to preserve the right," she said. "They have to be sure that they're engaged in informed decision-making, because if they're not thinking about their constitutional obligation, and they just say, 'Well, that complies with legislation and regulation,' then they haven't fulfilled their constitutional obligation."

Green amendments made progress this year in Maine, Nevada, New Jersey and New Mexico. But there are active movements to consider them in other states, too, including Texas and Florida, where political leaders and industry are more skeptical of environmental regulation.

In Florida, activists are bypassing the state legislature entirely, opting instead to collect signatures to put a green amendment ballot initiative to voters directly. There, the proposed amendment is narrowly tailored to establish the fundamental right to clean and healthy waters.

Among the Florida measure's advocates is Mel Martin, a retired U.S. Marine Corps attorney who joined the green amendment movement when she was dismayed by changes she saw in her home state after returning from a long absence. Everything "was upside down," said Martin, the campaign coordinator for the Florida Right to Clean Water initiative.

"The Indian River Lagoon, which is where I wanted to show my kids how to fish, all my fishing secrets I wanted to pass on, when it started coughing blood, I was like, 'Okay, what's going on?'" she said, referring to a red tide, or harmful algal bloom. "Florida, the Florida I grew up in, was very good about protecting its environment. It was very good about responsible growth and responsible decisions at the government level of, you know, 'don't grow too fast.'"

In Nevada, there's been a rush of mining projects for lithium, copper and other critical minerals necessary for batteries and other technology for the green energy transition. A green amendment could be critical to protect people and natural resources in the lower-income and communities of color at the heart of that boom, said Olivia Tanager, an environmental justice program manager at the Progressive Leadership Alliance of Nevada.

"While it certainly wouldn't fix all of our environmental justice issues, it certainly would help give more standing to communities who were experiencing environmental injustices," she said.

In New Mexico and Nevada, green amendments face opposition from manufacturing and labor interests as well as an energy alliance that represents renewable energy and environmental advocacy groups.

"Mining hasn't totally stopped in Montana, and fracking hasn't totally stopped in Pennsylvania," Tanager said. But what green amendments in those states have done, Tanager said, is put a stop to "really bad projects that would be really bad for communities."

"And that's what we're hoping will happen in Nevada," she said. "But the opposition made it seem as though it would stop all industry, that it would be a huge job killer."

The Interwest Energy Alliance, a coalition of utility-scale renewable energy developers and manufacturers that also includes environmental advocacy organizations such as the national Sierra Club, warned New Mexico lawmakers that the green amendment could keep the state from meeting its renewable goals. Rikki Seguin, the executive director of the Interwest Energy Alliance, told the Carlsbad Current-Argus in February that the group is concerned the green amendment could lead to lawsuits during the permitting process, and that the "actual language of the bill

will make it more difficult for us to build clean energy projects in the state."

The Rio Grande chapter of the Sierra Club in New Mexico supported the green amendment, Luis Guerrero, the organization's legislative and political organizer, said in an email. But it wasn't their highest legislative priority this year, Guerrero said, because they knew it faced headwinds.

Similar opposition surfaced in Nevada. The proposed green amendment there may "impede both infrastructure rehab and new infrastructure development, as well as those activities and changes that are coming to encourage renewable energy efforts," said Terry Graves of the Nevada Manufacturing Association, in testimony submitted to a state Assembly committee. Although a green amendment had a hearing in a legislative committee, it hasn't moved forward in Nevada.

In New Mexico, Sedillo Lopez said she decided not to press forward with the amendment this legislative session because of inaccuracies in a fiscal impact report that accompanied the legislation. She also disputed an analysis by the state's Energy, Minerals and Natural Resources Department, which suggested the amendment would create legal uncertainty that "might result in costly litigation that could impact the financial feasibility of certain energy projects."

The opposition based on concerns about litigation is not uncommon, according to an analysis by the American Bar Association. Green amendments "will create some additional litigation, uncertainty, and burden on business and industry," the ABA notes. "But they are being enacted precisely to address the uncertainty and burden that currently falls on the people due to risks from unregulated exposures."

It was disheartening to encounter some of the same objections they've often heard from extractive industries in New Mexico, Sedillo Lopez



said, but this time coming from green energy companies.

"To have them carrying the water for oil and gas was really weird because those were the same crappy arguments that we had seen before from oil and gas," Sedillo Lopez said. "But having it come from [renewable energy](#) gave it more credibility, which it didn't deserve."

Joanne Ferrary, a Democratic state representative from southern New Mexico who supports the green amendment, points to Chaparral, a town in her district where residents live near a natural gas-fired power plant across the border in Texas. Already, the community faces some of the worst air quality in the nation. A tool like the green amendment could establish [clean air](#) as a fundamental right when regulators are weighing the pros and cons of future infrastructure in New Mexico, Ferrary said.

"They would be able to point to the green amendment and say, 'Well, we have to take more careful consideration of what we're allowing or doing and make sure that it's not going to have a detrimental impact on the people of that area or the whole state,'" Ferrary said.

"New Mexico already has so many sacrifice zones that we don't need to have further pollution of our air, water and land," she added. "Everyone deserves a clean, safe and healthy environment."

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