

Aloha Attorney General Lopez,

We, the undersigned organizations, are writing in strong support of the proposal to add environmental rights to the Bill of Rights of the Hawai'i Constitution, otherwise known as the Hawaii Green Amendment. If approved by voters in a referendum, this proposed Bill of Rights amendment will help preserve a strong economy, human health, and a quality environment.

We applaud you and your department's herculean efforts to protect our communities in the face of a barrage of executive orders, and a slew of other harmful actions taken by the Trump Administration, that have the potential for significant negative impacts in Hawai'i, including to the health and safety of our climate and environment. We are proud of our state's involvement in the 27 ongoing lawsuits against the federal government, and for your standing up to protect our rights from federal overreach.

As a coalition of organizations that are very concerned about the environment and the climate crisis, we take particular issue with the Trump Administration's attack on clean energy, including stripping funds for good quality clean energy projects, and his dogged dedication to legal and policy changes designed to grow and advance fossil fuel development despite its devastating consequences for Hawai'i, our nation and world.

While having a "Green Amendment" in our state constitution would not have slowed or stop this federal assault on environmental protection; it would have strengthened our state's leadership in environmental protection, giving us a new and valuable tool for protecting our water, air, beaches, ecosystems, climate, and environments. Green Amendments, which place the right to a clean and healthy environment within a state constitution's Bill of Rights (as in Pennsylvania, Montana, and New York), recognizes environmental rights as inherent and inalienable rights, legally on par with our right to free speech. Giving Bill of Rights recognition to environmental rights and recognizing them as a self-executing and enforceable right of the people provides essential protections and opportunities that we do not have in our existing constitutional language – it is an approach that has demonstrated great value in the 3 states that already have Green Amendment protections.

As the federal government rolls back even minimal environmental protections, it is essential that local and state governments, backed by the will and power of the people, are able to step in to the fray. Securing a Hawai'i Green Amendment will do just that by:

- √ ... Empowering communities to address infringement on environmental rights such as clean water and air, by providing constitutional grounding for their advocacy and access to the courts for redress;
- √ ... Strengthening the healthy economic growth that avoids the costs of environmental harm including illness, cleanup costs, flooding, drought and declining property values by ensuring government laws, regulations, decisions, permits and actions avoid environmental degradation rather than responding to it after-the-fact;

- √ ... Ensuring that in those instances when government does knowingly infringe on environmental rights there is a compelling state interest and there has been a conscious effort to minimize the impacts on the right, i.e., minimize environmental harm;
- √ ... Ensuring government and businesses seek to advance environmentally sustainable and protective business, development and industry operations.

While the amendment will be a tool to prevent environmental harm, it will also provide legislators and regulators constitutional grounding upon which to advance positive and strengthened environmental protections by:

√... **Elevating Environmental Rights Protection for All of Government:** The bill of rights placement and chosen language in the amendment will ensure that every government official at the local and state level -- whether they are elected, appointed or hired -- prioritizes and advances environmental protection at every stage of the decision-making process, and can strengthen the opportunity for needed adjustments, rather than waiting until the end of the process when the focus is necessarily on permitting pollution and harm rather than preventing it.

√... **Filling Legislative and Regulatory Gaps:** Recognizing that it can take time for the legislative and regulatory process to identify and address new technologies or emerging contaminants -- with essential protections often coming way too late and after irreparable harm has been done (PFAS is a perfect example) -- a self-executing environmental right can be relied upon by government and the public to fill the gaps in protection (for example, relying on the right to clean water to inform permitting decisions) until such time as protective legislation and regulations can be developed and passed.

√... **Protecting Future Generations From Irreparable Harm:** By recognizing environmental rights as also belonging to future generations, and doing so in the Bill of Rights using self-executing and enforceable language, we are ensuring that government decision-making considers cumulative impacts of pollution and degradation over time, and that holistic and informed scientific study is brought to bear on government decision-making, so that we can prevent irreparable harm to the children, animals and ecosystems that will inherit the earth we leave them.

√... **Strengthening Environmental Justice:** A constitutional mandate that ensures equitable protection of our environment, will empower and require government decisionmakers to prevent and address government actions and decisions that cause or allow indigenous communities, communities of color and low-income communities to consistently and repeatedly be subjected to disproportionate and growing levels of pollution. Addressing environmental inequity is an essential part of addressing historic and systemic racism.

In practice, Green Amendments have helped impacted communities, local government and state government officials address issues of serious and significant concern including protecting natural rivers,

protecting drinking water, securing cleanup of long ignored toxic contamination, protecting remote ecosystems as well as urban green space, helping to address unchecked proliferation of fossil fuels, and empowering people and government to address the critical issue of climate change.

Over the years in Pennsylvania, the state with the longest existing Green Amendment, **the amendment has often been cited by the Attorney General's office as providing foundational support for their efforts** to enforce existing environmental laws and making sure the courts do not allow for a weaker interpretation of the law than the attorney general would argue for.

In addition to alerting you to the many strengths the Green Amendment would add to your toolbox, we would also like to address concerns raised by your department in previous testimony regarding the Green Amendment. In your previously testimony, you stated:

We are concerned that the proposed amendment could be construed to limit the Legislature's future ability to regulate the environment in novel ways to address evolving challenges. It may also raise questions concerning the constitutionality of existing environmental laws and regulations, or the implementation of such laws and regulations. All of this would complicate environmental enforcement efforts.

In Hawai'i, we have long recognized that a healthy environment is a human right to be honored and respected. With passage of the Green Amendment we are not creating an environmental right, we are instead recognizing that inalienable human right of all people to a clean, safe and healthy environment and ensuring they have legal standing, in addition to our government officials, to ensure those rights are protected. While Article XI Section 9 creates a right of the people to enforce existing environmental laws in our state, the Green Amendment would provide the opportunity for people, as well as state and local government officials, to enforce environmental rights in those times when our state laws as written, interpreted or applied fail to do so. As a result, we will strengthen environmental protection and environmental justice in our state, not limit it.

The proposed amendment will not prevent our legislature, or any arm of government, from taking robust, appropriate, creative and needed actions to protect all aspects of our environment. In fact, in Pennsylvania and Montana where the rights have been in active use for years, **it has often been local government and state government entities who have used the amendment** as a foundation for needed protection protections that were otherwise out of their reach. See for example (please note, these are but a few examples, we are happy to provide more upon request):

- ✓ **Cape-France Enterprises v. Estate of Peed 29 P.3d 1011** (Mont. 2001). State government relied on the MT Green Amendment to help them protect drinking water from contamination, rather than being forced to allow test well drilling that could have unleashed dangerous toxins into an entire town's drinking water supply;

- ✓ **Robinson Township, Delaware Riverkeeper Network v. Commonwealth 83 A.3d 901** (Pa. 2013). Seven municipalities joined by one environmental organization used the PA Green Amendment to preserve their zoning authority when it came to fossil fuel extraction operations seeking to locate in residential, agricultural and environmental protection zoning districts.
- ✓ **Commonwealth v. Monsanto Co. Commonwealth Court of Pennsylvania 269 A.3d 623** (2021). State of Pennsylvania relied, in part, on the PA Green Amendment to pursue damages from Monsanto for the tremendous economic harm their chemical products had inflicted (with the company's knowledge) on Pennsylvania communities and ecosystems.
- ✓ **Peifer v. Colerain Twp. Zoning Hearing Bd. Commonwealth Court of Pennsylvania 302 A.3d 811** (2023). County water authority was able to rely upon the PA Green Amendment to ensure its seat at the decision-making table regarding a potential CAFO operation that put at risk a key drinking water resource.
- ✓ **Township of Marple protects open space, old growth forest, and headwaters stream.** The Don Guanella woods is a 178-acre forest that was home to an old growth beech tree forest and headwater stream; and had for years provided environmental and recreational benefits to Delaware County residents. Marple is a suburban community located ~11 miles west of Center City Philadelphia. Recognizing, and citing, their PA Green Amendment constitutional duty to protect the environmental rights of their residents, and their trustee obligation over the natural resources of their community, the Board of Commissioners voted unanimously to reject the proposed residential development plan. The property is now preserved as public natural open space.

As with other fundamental freedoms in our bill of rights, the Green Amendment will ensure that when the legislature takes action as a governing body, they are guided by the obligation not to infringe on environmental rights and are in fact empowered by the obligation to ensure environmental rights are protected.

There is no reason to believe the amendment will undermine, or draw in to question existing environmental laws in the state; nor have we seen such assertions in the three states that have a Green Amendment. To the contrary, the amendment will help strengthen existing laws by ensuring they are interpreted and applied in a way that honors the constitutional rights of the people. To the extent existing laws are working well, the amendment will serve as silent support. But in those times when existing laws are not ensuring environmental rights are honored, the amendment can provide a backstop and foundation for good government officials and impacted community members to ensure a constitutionally appropriate interpretation and application.

As noted above, when there are gaps or limitations in existing law that is causing environmental rights to be infringed upon, both impacted communities and government officials can call upon the constitutional language to secure needed protections.

In sum, by creating a self-executing individual right of the people, we create the obligation and opportunity for all Hawai'i government officials to take stronger actions when needed to protect the inalienable human right of all of us to clean water and air, a healthful environment and climate, healthy native ecosystems, and beaches. And the amendment will ensure that when our government does not take needed action, or takes action that results in unacceptable harm, the people will have the opportunity to secure judicial review to determine if their environmental rights have been violated and a change of course is needed. Note, the courts will not seek to step in to the shoes of the other branches of government, it will simply and appropriately exercise its judicial review function.

Hawai'i is a beautiful state, but it's environmentally fragile. Environmental harm is bad for all of us. When we damage our beautiful Hawai'i, it harms our health, while also damaging our way of life and our economies.

Hawai'i has long been a champion for our beautiful Aina and for ensuring the rights of future generations is honored. The Hawai'i Green Amendment will help us carry forward these fundamental beliefs and leave a legacy of protection we and future generations will honor.

We hope you will join us this legislative session in support of this very important measure. We welcome your thoughts on the matter and will be very happy to make ourselves available to you for further discussion.

Mahalo!

Signed: