



February 10, 2022

Members of the Committee on Agriculture and Environment,

I would like to comment regarding SB2962, i.e. the proposal to add environmental rights to the Bill of Rights of the Hawaii Constitution.

My name is Maya van Rossum, I am an attorney, leader of the organization Green Amendments For The Generations, and author of the book titled *The Green Amendment, Securing Our Right to a Healthy Environment*, focused on the power and importance of Bill of Rights constitutional recognition and protection of environmental rights.

Adding Environmental Rights to the State Bill of Rights will provide important and valuable additional protections for the natural resources and people of Hawaii.

The Environmental Rights amendment being proposed will ensure the environmental rights of Hawaii's people are given the same highest constitutional recognition as other fundamental rights. In addition, the Bill of Rights placement will raise up environmental rights so they become part of the guiding obligations and principles for all government action and legislation – rather than the people's environmental rights being defined by legislation passed, the amendment will flip the script ensuring that when government acts it will carry out the mandates of the amendment.

While Hawaii has in place important environmental protections in its constitution as recognized and applied by the courts, the proposed environmental rights amendment will help strengthen the goal of enforceable environmental rights. Article XI, Section 1 establishes the state of Hawaii to be a trustee of the natural resources of the state to be protected for present and future generations. The courts have effectively interpreted this trustee obligation as providing important substantive and procedural protections. Article XI, Section 9 is significantly different. The provision promises that “Each person has the right to a clean and healthful environment as defined by laws relating to environmental quality.” While the courts have recognized that this provision gives the people the right to enforce environmental laws in court, the substantive right under this provision remains unclear.

Simply editing Article XI Section 9, as has been suggested by some, will not accomplish the goal of ensuring that the rights of the people to a clean, healthy and safe environment, including water, air, beaches, climate and native ecosystems are given the same constitutional recognition and protection as other fundamental rights. At its core, what is being asked for here is that the people get to make the decision. If this amendment passes through the legislature it will not result in a constitutional amendment, it will simply mean that the question will be placed before the people to decide. As recognized in Article 1 Section 1 of the Hawaii Constitution: “All political power of this state is inherent in the people....” With this amendment the people will be given the opportunity to express their desire that their need for a clean, healthy and safe

environment is given the same respect and protection as other rights such as the section 2 right to “pursue happiness”, the section 4 right to “freedom of speech” and “peaceably to assemble”, the section 6 “right of the people to privacy” and the section 17 right to “keep and bear arms”, amongst others. This amendment simply ensures the minimum necessities to live a life of dignity – including clean and healthy air, water, beaches, native ecosystems, climate and environments.

Hawaii can look to those states that have amendments of this kind to see how the amendment is likely to be used to secure environmental rights recognition and protection.

Currently there are 3 states – Pennsylvania, Montana, and as of November 2021, New York - - benefitting from constitutional Green Amendments of this kind. In Pennsylvania and Montana, the two states that have had enshrined environmental rights in their state constitution bill of rights for a number of years now, legislators, regulators, the state attorney general, the governor, local government and the courts have successfully used the constitutional language to protect the environment while balancing multiple community interests including property rights and economic development. When needed, the legal actions filed have not been to stymie economic development but rather to address serious issues of public concern – protecting drinking water, supporting government action to secure responsible party clean-up of toxic contamination, and protecting local authority intended to protect local environments.

Overall the amendments are being used to support and secure better government decision-making that avoids environmental pollution and degradation. In those situations where a constitutional violation is found, the remedy secured in the courts has been an equitable remedy to reverse the unconstitutional action and allow the opportunity for a remedy.

Article I protection of environmental rights and recognition of this as a fundamental right will require and strengthen important procedural and substantive environmental rights protections.

As happens with other fundamental rights, placement of this language in Article I will ensure that government prioritizes environmental protection and works to avoid environmental pollution and degradation as part of the decision-making process; when there is the best opportunity for preventing harm including (but not limited to) when crafting and implementing legislation and regulations, issuing permits, approving development, and considering how to address ongoing environmental concerns.

The compliment of individual rights with the existing recognized role of government as trustee will strengthen environmental justice protections, ensuring all government officials ensure equitable environmental protection regardless of race, ethnicity, or socioeconomic status.

Placement in Article I ensures environmental rights are protected on par with other fundamental rights and ensures fair balancing of rights when needed. For example, when there is a tension between property rights and protecting the environmental rights of the people, the two will have to be balanced and both protected. Ensuring environmental rights protection will also, by its nature, strengthen property rights protection because too often pollution migrates on to the property of others. The complement of property rights with environmental rights will allow us to better protect the sanctity of families and homes.

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.

Article I protection of environmental rights will ensure environmentally sustainable and protective economic development.

While it has been suggested that the proposed environmental rights amendment will stymie economic development in Hawaii, this is not the intent, and in practice this has not been the result of these important amendments in the states where Green Amendments currently exist.

First and foremost, advancing Bill of Rights recognition for environmental rights is about protecting the people and the natural resources they depend upon. Constitutional environmental rights are not intended to prevent development or economic growth; but instead aim to ensure that industry and business advance sustainably, using standards and practices that best protect the environment and other constitutional rights, like the property rights of those that would be harmed by migrating pollution, for example.

In addition, constitutional environmental rights protection will enhance economic development by encouraging sustainable, environmentally protective, and innovative development, industry, and businesses that support jobs and economic growth but at the same time avoid the economic, health and safety harms that result from environmental pollution and degradation. The environmental rights amendment will provide a powerful incentive and mandate 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, beaches, soils, forests, wetlands, climate and other natural resources critical to sustaining healthy, safe and successful lives and economies.

I thank you for the opportunity to comment.

With respect, regards and appreciation,

A handwritten signature in blue ink that reads "Maya K. van Rossum".

Maya K. van Rossum
Founder, Green Amendments For The Generations