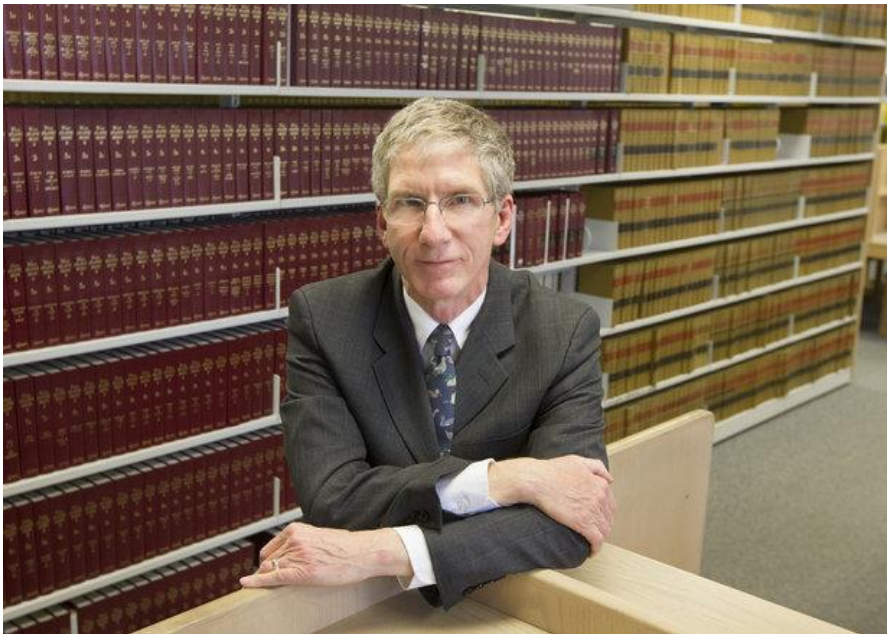


[http://www.pennlive.com/midstate/index.ssf/2014/04/environmental\\_rights\\_5\\_shockin.html](http://www.pennlive.com/midstate/index.ssf/2014/04/environmental_rights_5_shockin.html)

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# Environmental Rights: 5 facts about the Pennsylvania Constitution



John Dernbach, Widener University law professor, has written about the Environmental Rights Amendment, and his analysis was cited by Chief Justice Castile in his landmark plurality opinion. Dernbach said he was humbled by the honor of having his work cited by the court.

Joe Hermitt, PennLive.com



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## **A GREEN RULING: THE FIGHT FOR ENVIRONMENTAL RIGHTS IN PENNSYLVANIA**

Added to the state constitution more than 40 years ago, the environmental rights amendment to the Pennsylvania Constitution was the basis for the Supreme Court overturning the law that pre-empted local zoning ordinances in order to maximize gas drilling in the Marcellus shale.

Article 1, Section 27 of the Pennsylvania Constitution reads:

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

Here are five facts about the amendment

## **1 - The right to clean air and pure water is equivalent to the right to free speech.**

As part of the Constitution's "Bill of Rights" section, the placement and the phrasing of the amendment puts the right to clean air and pure water and the preservation of the natural, scenic, historic, and esthetic values of the environment on par with citizens' right to be free from unreasonable searches and seizures.

## **2 - Both Republicans and Democrats were for it: the amendment passed the House of Representatives and the Senate unanimously - twice!**

Adding environmental rights to the Constitution was a "strong bipartisan effort," according to its author, Franklin Kury, who was a representative at the time. "The leadership of both parties was for it."

Constitutional amendments must pass two successive sessions of the legislature before going to a vote of the people. The environmental rights amendment first passed the House 190-0 in June 1969, less than two months after Kury introduced it. The Senate passed it 39-0 in March 1970. It passed the House again in February 1971 with a vote of 199-0. The Senate approved it the same month with a vote of 45-0.

**3 - In addition to the Speaker at the time, Herbert Fineman, the amendment was co-sponsored by four future Speakers of the House: Democrats Leroy Irvis and James Manderino, as well as Republicans Jack Seltzer and Matthew Ryan.**

"There were heavyweight lawyers looking at this - they knew what was going on," said Kury. "Every legislator from the coal region was on there - World War II vets - no-nonsense guys."

"This was not some feel-good Earth Day proclamation, not a flight of environmental fancy."

Kury said legislators - and the people of Pennsylvania - had had enough of the environmental disasters that had been perpetrated by the coal and steel industries over the previous years.

"We were determined this would never happen again," he said.

**4 - The people of Pennsylvania voted 4-1 in favor of the amendment.**

The amendment went before the people of Pennsylvania as a ballot question in May 1971. It was one of five ballot questions that election. Voters rejected two, and approved two with a margin of roughly 2 votes to 1, but the voters overwhelmingly approved the environmental rights amendment 4 to 1.

It received more than 1 million votes in favor and just 259,979 votes against.

In fact, the environmental rights amendment received more votes than any of the candidates for statewide office who were on the ballot.

As the Supreme Court recently wrote: "To say the Environmental Rights Amendment was broadly supported by the people and their representatives would be an understatement."

## **5 - It took more than 40 years before the protections in the amendment were given full expression by the courts.**

Ever since early court challenges in the 1970s, conventional wisdom held that Article 1, Section 27 didn't have real teeth.

The case law did establish that environmental regulations passed by the legislature and enforced by agencies like the Department of Environmental Protection would survive a constitutional challenge because the Environmental Rights Amendment put environmental protection on par with the constitutional right to property. Environmental enforcement by the state was thereby strengthened.

But citizen - and sometimes even state - challenges to specific projects rarely succeeded, because the courts created a "balancing test" in which any particular project was judged on whether or not it complied with existing regulations, whether an attempt had been made to mitigate environmental damage and whether that damage so clearly outweighed any benefits that proceeding would be "an abuse of discretion."

These precedents in the lower courts "weakened the clear import of the plain language of the constitutional provision." The Supreme Court last year saw an opportunity to weigh in on Article 1, Section 27 in ways it never had before. It took the opportunity and [overturned much that had been considered settled case law](#).

The Court determined that earlier precedent "has tended to define the broad constitutional rights in terms of compliance with various statutes and, as a result, to minimize the constitutional import of the Environmental Rights Amendment."

In overturning previous precedents, the Supreme Court attempted to outline the "foundational principles" for an entirely new and "coherent environmental rights jurisprudence."

According to the Supreme Court, "The right delineated in the first clause of Section 27 presumptively is on par with, and enforceable to the same extent as, any other right reserved to the people in Article 1." That includes the right to life, liberty, property and the pursuit of happiness; it includes freedom of speech, freedom of religion, the right to trial by jury and the right to bear arms.

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