

Environmental Rights Are on the Ballot

October 22, 2021

When New Yorkers go to the polls on November 2, they will be deciding whether the Bill of Rights to the state's Constitution should be amended to include these fifteen words: "Each person shall have a right to clean air and water, and a healthful environment." The "Environmental Rights Amendment" on the ballot this year would place the right to a clean and healthy environment on equal footing with core civil liberties like the right to free speech and due process.

All this comes as the final step in the multi-year amendment process laid out in the state Constitution. Proposed amendments to the Constitution may only be sent to the voters for a referendum if they are approved by both houses of the New York state legislature in two consecutive legislative sessions. See N.Y.S. Const. Art. XIX §1. Bills proposing the Environmental Rights Amendment passed both the Senate and Assembly, in two consecutive legislative sessions—first in 2019 and again in 2021. We expect that the Amendment will be approved by voters on November 2 and become part of the New York State Constitution.

What does this mean for New Yorkers? While there is no doubt the intent is to increase protections for individual New Yorkers from environmental hazards ranging from tainted drinking water to asthma-inducing air pollution to climate change, the Amendment is broadly written and its real word implications are not spelled out. The Amendment's legal significance and effect on New Yorkers and the environment will, to a substantial degree, be determined by the courts. In the few states (and territories) that have environmental rights amendments—Hawaii, Illinois, Massachusetts, Montana, the Northern Mariana Islands, Pennsylvania and Rhode Island—our research shows that courts have demonstrated a willingness to issue important decisions in favor of the environment, including by invalidating legislation that is in derogation of these rights.

We believe the amendment has the potential to push lawmakers and government officials to consider environmental protection more carefully in policy decisions, placing a premium on avoiding environmental harms. The Amendment could become a weighty factor that tips cost-benefit analyses in favor of more protective environmental regulations. In this way, the Amendment may be pointed to by regulators to justify stricter environmental regulations when they are challenged in court.

If passed, we do not think it will be too long before environmental and community groups test the Environmental Rights Amendment in court. As always, Carter Ledyard will keep you advised of any legal developments.

* * *

Carter Ledyard & Milburn LLP uses Client Advisories to inform clients and other interested parties of noteworthy issues, decisions and legislation which may affect them or their businesses. A Client Advisory does not constitute legal advice or an opinion. This document was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein. © 2021 Carter Ledyard & Milburn LLP.

related professionals

Nicholas W. Tapert / Counsel

D 212-238-8703

tapert@clm.com

Christopher Rizzo / Partner

D 212-238-8677

rizzo@clm.com

Karen E. Meara / Partner

D 212-238-8757

meara@clm.com