

TESTIMONY OF MICHELLE HENKIN

LD 928—Ought to Pass

**RESOLUTION, Proposing an Amendment to the Constitution of Maine
To Establish a Right to a Healthy Environment**

Joint Standing Committee on Environment and Natural Resources

March 22, 2023

Senator Brenner, Representative Gramlich, and distinguished Members of the Committee on Environment and Natural Resources, greetings:

Thank you for the opportunity to speak in wholehearted support of LD928, also known as the Pine Tree Amendment. My name is Michelle Henkin and I live in New Harbor, on the Pemaquid Peninsula. I am an artist, a farmer, a lover of the natural world, and a believer in fairness, justice and the importance of being a good steward.

The resolution before you would amend the Maine State Constitution to establish the right to a clean and healthy environment for all people in Maine, including generations yet to come. The question has been raised many times since the Pine Tree Amendment was first introduced in the 130th Legislature, **“Why do we need to amend the Constitution?** We already have strong laws and regulations protecting the environment in Maine.”

Because I am sure that the testimony of others will address the reality that laws and regulations can be repealed, undermined and poorly enforced, **I will focus on the words currently in the Constitution because words shape both our reality and our imagination, and they determine what is possible legally.**

I’d like to start by looking at the Declaration of Rights section of the Maine Constitution, which is where the Pine Tree Amendment would be placed. It begins by stating that **“All people** are born equally free and independent, and **have certain natural, inherent and unalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness.”**

For me, one of the most important parts of the Pine Tree Amendment is that it will redress an imbalance baked into the Declaration of Rights. Article 1 explicitly states that private property rights are protected while my rights (and those of my family, friends, community and descendants) to what is essential to our ability to survive and thrive, namely clean air and clean water and healthy ecosystems, are not explicitly mentioned. Thus, while large corporations have the right to do business, individuals do not have a legally enforceable right to live in a clean and healthy environment. **In our courts and agencies, the rights of business or government to negatively impact Maine's environment are generally given higher standing under the law and in decision-making because the people of Maine do not have a constitutionally protected legal right to air they can breathe and water they can drink.**

What if the framers of Maine's Constitution had been able to look into the future and had seen that there would come a time when technologies would exist that could threaten the air we breathe, the water we drink, and the ecosystems we rely on for our food, our safety, and our sense of place? I believe they would have included the right to a clean and healthy environment if they could have imagined the necessity of protecting it.

The Pine Tree Amendment is not some pretty sounding, aspirational thought experiment. Nor is it a recipe for endless litigation or the ruin of the economy. Environmental rights amendments with Bill of Rights placement have been time-tested and proven to be effective protection when bad corporate actors or misguided government fail to take environmental impacts into consideration, and people and communities are harmed. **These are not neighbor-to-neighbor conflicts or minor infractions. These are environmental harms that rise to the level of a constitutional violation.**

The track record in Pennsylvania and Montana, and now New York, shows that there are relatively few cases brought each year citing their environmental rights amendments, and when cases are brought, they are meaningful and necessary to protect the welfare of the surrounding communities. Rather than decrying the possibility that the Pine Tree Amendment will be used by the people who face an environmental threat, or by municipalities facing State overrides of environmental protections voted on by their residents, we should be thankful that there will be a means to take action when there is a clear and substantial need to hold government accountable for legislation harmful to the environment or for a faulty permit that puts communities at risk.

The Pine Tree Amendment will both obligate and allow the courts to balance the competing interests of government and corporate activity and the health of Maine's people. **Passage of the Pine Tree Amendment will not mean that environmental concerns will supersede economic concerns. Simply put, both interests will have a voice and a seat at the table.** Better decisions will be made that will result in the avoidance of costly clean-ups, negative health impacts, and the loss or diminishment of the natural beauty we enjoy in Maine and want future generations to enjoy as well.

I urge you to vote 'Ought to Pass' on LD 928.

Thank you for your consideration.

Respectfully submitted,

Michelle Henkin