

# JOHN BRAUTIGAM

Esq. LLC

March 8, 2021

Senator Stacy Brenner  
Representative Ralph Tucker  
Co-Chairs  
Joint Standing Committee on Environment and Natural Resources

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

Dear Senator Brenner and Representative Tucker:

I am pleased to testify in support of Senator Maxmin's proposed Amendment to the Constitution of Maine to Establish a Right to a Healthy Environment.

I know some of you, but let tell you a little bit about myself. I have lived in Falmouth for 25 years, and I have been practicing law for nearly 30 years. I've served as an Assistant Attorney General, an attorney for a federal agency, and as legal counsel to organizations involved in public policy issues, especially in elections and democracy. I am not a specialist in constitutional law, but I have litigated a handful of cases focusing on constitutional issues, including one that I argued before the Law Court and is currently awaiting a decision. I have academic degrees in government, history, and law, and I have taught at the secondary school and college levels. I also served in the House of Representatives during the 122<sup>nd</sup> and 123<sup>rd</sup> legislatures.

I share with you my background experiences because they inform my testimony in support of this constitutional amendment. Other witnesses will talk about the particulars of the resolve. I don't intend to wordsmith the proposal or address the details. Nor will I try to anticipate opposition arguments about unintended consequences. I also don't want to predict how this new constitutional provision might be applied in certain circumstances or how a court would interpret it.

Instead I want to take a step back and view the proposal from a broader perspective. All people have certain rights. These rights are not given to us by the government. They are a natural feature of human existence, and they cannot be taken away. In other words, they are inalienable. These rights exist whether or not the government actually recognizes them and protects them. These rights represent our deep values. They are moral and philosophical truths. They are not a product of the legal or political process. They come from a higher place.

The legislature can and often does debate good public policy. That policy can change depending on the prevailing interests of the public and the outcome of the political process.

But I believe that the public interest in a healthy environment is in a category of its own above those policy debates. It is valuable and indeed necessary for us to secure that right for ourselves and future generations with the strongest possible legal protection in the very foundation of our government. We should give it the most durable and permanent recognition we can possibly provide.

I don't believe that this right trumps all other rights, but I do believe it has the same gravity as other rights your predecessors placed in the constitution, including the right to local self-government, the right to be free from corporal punishment, the right to worship, the right not to be discriminated against, the right to keep and bear arms, the right to have contracts respected, and the right to be safe.

This is a different conversation than those at most public hearings. The right to a healthy environment is a natural right that does not depend on what the government does. The only issue here is whether our laws will recognize that right and fortify it with an express statement of our common resolve and with the protection of our constitution.

This is an important debate at a critical time. The right to a healthy environment is in danger. It needs this protection.

One additional reason why the right to a healthy environment should be given constitutional protection is that this right extends beyond the generational horizon. It recognizes that we will be followed by Mainers as yet unborn, and they will have the same rights that we have. Our generation has no legitimate authority to do anything that reduces their rights for our own benefit.

Occasionally I get to testify on something that goes beyond legal niceties, and touches the very fiber of our common purpose -- an idea or measure that addresses the substance of what we are doing together as a government and a public community. That is what this bill is all about.

I am confident that if you consider this resolve in that spirit, it will be clear to you that we need to do this. This is your calling as elected representatives. If you send this resolve to the voters, an overwhelming majority will enthusiastically endorse this measure. Future generations will remember your vision and leadership with gratitude.

I appreciate your consideration.

Very truly yours,

A handwritten signature in black ink that reads "John Brautigam". The signature is written in a cursive style with a large, looping initial "J" and a long, sweeping underline.