

**THE CONSTITUTIONAL  
QUESTION TO SAVE  
THE PLANET  
THE PEOPLES' RIGHT TO A  
HEALTHY ENVIRONMENT**

Franklin L. Kury

*Written to commemorate the fiftieth anniversary of the adoption of the  
Pennsylvania Environmental Rights Amendment, Article I, Section 27,  
by Pennsylvania voters on May 18, 1971.*

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## **Dedication**

*This book is dedicated to Basse Beck. His vision of the Susquehanna River as a public natural resource that is the common property of all the people, and his leadership role in my 1966 campaign for the Pennsylvania House of Representatives, made possible this story.*



# **Constitution of the Commonwealth of Pennsylvania**

Article I. Declaration of Rights.

Section 27. Natural Resources and the Public Estate.

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 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.



# Table of Contents

Preface, by Sen. Tom Udall .....	xi
Introduction .....	xiii
<b>PART 1: THE BIRTH OF ARTICLE I, SECTION 27, ON MAY 18, 1971 .....</b>	<b>1</b>
Chapter 1: How I Met Basse Beck.....	3
Environmental Game Changer: Basse Beck.....	8
Chapter 2: The Assault on Gibraltar—The 1966 Campaign.....	11
Chapter 3: Pennsylvania’s Environmental Revolution .....	19
Chapter 4: Originating and Enacting Article I, Section 27 .....	25
<b>PART 2: THE UNITED STATES THROUGH MAY 18, 1971.....</b>	<b>31</b>
Chapter 5: The Environmental Silence of the United States Constitution .....	33
Our Country’s Early Years and the Environment .....	33
The Civil War Unleashes Exploitation of Our Natural Resources .....	35
Westward Migration After the Civil War .....	35
Putting the Brakes on Environmental Degradation .....	37
Special Report—Pennsylvania and Montana: A Study in Parallels.....	41
Chapter 6: The Environmental Awakening .....	43
Environmental Game Changer: Rachel Carson .....	50
Environmental Game Changer: Gaylord Nelson .....	53
<b>PART 3: THE HALF CENTURY SINCE MAY 18, 1971.....</b>	<b>57</b>
Chapter 7: Pennsylvania Courts Anesthetize Article I, Section 27 .....	59

Chapter 8: The English Language Prevails..... 65  
 Environmental Game Changer: Ronald Castille ..... 72

Chapter 9: Other States Begin to Act While the United States  
 Constitution Remains Silent ..... 75  
 Special Report—Hawaii: A Clash of Cultures and the  
 State Constitution..... 78  
 Environmental Game Changer: Julia Olson ..... 85

Chapter 10: The International Community ..... 87

Chapter 11: The Greatest Environmental Game Changer—  
 Global Warming ..... 95  
 Sean Norman and the California State Firefighting Service .... 96  
 Will Baker and the Chesapeake Bay ..... 97  
 Scott Weidensaul and Migratory Birds..... 99  
 Ann Thompson: New Jersey on the Front Lines of  
 Climate Change..... 101  
 Climate Change Impacts on Military Facilities Pose  
 Critical Threats to National Security ..... 102

**PART 4: MAY 18, 2071, AND THE LEADERSHIP OF THE UNITED  
 STATES ..... 105**

Chapter 12: An Environmental Amendment to the  
 U.S. Constitution ..... 107  
 The Right to a Healthy Environment..... 109  
 Affirming Public Natural Resources and the Trustee  
 Responsibility of the Government..... 111  
 Why the Political Effort to Enact the Twenty-Eighth  
 Amendment Is Worth It ..... 112

Chapter 13: A Climate-Centered Foreign Policy for the United  
 States ..... 115

Chapter 14: May 18, 2071, and the Leadership of the United  
 States ..... 121

Afterword: President Biden’s Urgent Opportunity ..... 129



Appendix I: Examples From Basse Beck’s “Up and Down the River” Column .....	137
Appendix II: Extracts From the Pennsylvania Legislative Journal of April 14, 1970 .....	141
Appendix III: Environmental Provisions in State Constitutions Compared With Pennsylvania’s Environmental Rights Amendment, Article I, Section 27 .....	163
Appendix IV: Congressional Initiatives to Add an Environmental Rights Amendment to the United States Constitution .....	179
Appendix V: Nations Recognizing the Right to a Healthy Environment .....	185
Appendix VI: Green New Deal, H. Res. 109 (2019).....	191
Acknowledgments .....	199
About the Author .....	201
Photographs, Charts, and Maps.....	203
Bibliography .....	205
Table of Cases .....	213
Suggested Reading .....	215
Index .....	217



## Preface

The 1960s were a time when Americans were beginning to awaken to the destruction pollution was wreaking on our environment and the urgent need to halt that destruction. The Cuyahoga River in Ohio, filled with oil and solvents, burned. A brown blanket of brown smog, caused by fuel combustion, hung over Los Angeles. The pesticide DDT threatened extinction of the bald eagle.

At that time, a few visionary leaders were sounding the alarm—urging America to recognize that heavily polluted lands, water, and air were killing nature and threatening the public’s health. I’m proud to count my father, Stewart Udall, as one of those early voices. In 1963, when he was serving as President John F. Kennedy’s secretary of the U.S. Department of the Interior, he wrote *The Quiet Crisis*—warning that, “America today stands poised on a pinnacle of wealth and power, yet we live in a land of vanishing beauty, of increasing ugliness, of shrinking open space, and of an overall environment that is diminished daily by pollution and noise and blight.”

A year earlier, Rachel Carson—whom my father mentored and championed—had published her groundbreaking book, *Silent Spring*, exposing how DDT was thinning eagle’s eggshells and killing our national symbol. The chemical industry excoriated Carson. But she was undeterred in her mission that the facts and the science come out.

Franklin Kury, a young lawyer beginning his practice in Sunbury, Pennsylvania, was also at the forefront of the environmental movement of the 1960s. Franklin became a driving force behind a bill in the Pennsylvania legislature passed to protect the state’s rivers and streams from the destruction of coal mine drainage. That was 1965. Not content with that early legislative success, Franklin ran for the state legislature himself and won a seat as a Democrat in a traditionally held Republican district. He then began what turned out to be a successful journey to amend the state’s constitution to add Article 1, Section 27—a provision that would forever protect Pennsylvania’s environment and natural resources.

These early leaders helped awaken America to the importance, the imperative of protecting our lands, waters, and air from pollution. They rang in an unprecedented era of environmental legislation—legislation that passed Congress with strong bipartisan support. The Wilderness Act, Water Quality

Act, the Land and Water Conservation Fund Act, the Solid Waste Disposal Act, the Endangered Species Preservation Act, the National Trails System Act, and the Wild and Scenic Rivers Act—were all passed in rapid succession between 1964 and 1968.

Both major parties were behind this environmental legislation, and Franklin recounts how he worked constructively with his Republican counterparts in the Pennsylvania legislature to pass the stream protection bill and the environmental protection constitutional amendment.

It's a bygone era—unimaginable today. Even now, as we face the existential crisis of climate change, as scientists warn we have a short window within which to act before we reach a tipping point—a hyper-partisan Congress has yet to pass legislation that truly takes on this threat.

But it is an existential threat we face. And it's with this threat in mind that Franklin now presses for an environmental amendment to the United States Constitution, the same type of amendment he pushed through in Pennsylvania, to protect our nation's natural resources—our lands, waters, air, fish, and wildlife.

This isn't the first time such an amendment has been proposed. For example, my uncle, Morris Udall, an environmental champion who served in the United States House of Representatives for thirty years, introduced an amendment to the United States Constitution in 1970 that would have given Americans the right to “clean air, pure water . . . and the natural, scenic, historic, and esthetic qualities of their environment.”

But the need for such overarching protection of the public's natural resources has never been so urgent—with climate disruption at our doorstep, species threatened with mass extinction, and critical habitat being swallowed up everywhere.

In the end—the threat to nature is a threat to all of humanity. We cannot live without nature. Our life support system is based on the planet's biological resources that give us food, shelter, medicine, economic development—the fundamentals to survive.

Protecting nature protects humanity. Or, as my father put it more than fifty years ago, “Plans to protect air and water, wilderness, and wildlife are in fact plans to protect man.”

As a nation, we must recognize the peril we are in. And act. And act fast. To save our planet as we know it.

*Tom Udall*

United States Senator from New Mexico

September 1, 2020

# Introduction

“The Right to a Stable Climate Is the Constitutional Question of the Twenty-First Century.” That proclamation was the headline for an article by Carolyn Kormann in *The New Yorker* magazine of June 15, 2019, describing arguments before the United States Court of Appeals for the Ninth Circuit in the Oregon case of *Juliana v. United States of America*, also known as the climate kids’ lawsuit. In this case, twenty-one people between the ages of nine and twenty-one from all parts of the country filed a lawsuit in the United States District Court in Oregon against the United States for failure to protect them from the damages caused by climate change in violation of their right to a healthy environment under the Fifth Amendment of the United States Constitution.

The Fifth Amendment provides that no person may be “deprived of life, liberty, or property without due process of law.” The *Juliana* case asserts that government policies on fossil fuels contributed to catastrophic climate changes that deprive them of “life, liberty, or property” in violation of the Fifth Amendment. They are asking the Court to compel government action to phase out fossil fuel emissions that exacerbate climate change.

Recent years have seen thousands of rallies and numerous lawsuits both here in the United States and throughout the world spurred by the onrush of climate change. All of them seek government action to protect the public’s right to a healthy environment. *Juliana* is the first lawsuit filed by individual plaintiffs to seek relief from climate change in a federal court based on the assertion that the United States Constitution as written provides a right to a healthy environment.

The *Juliana* case was filed in 2015 during the Obama administration. It is still slowly winding its way through the courts, and it is likely to be some time, perhaps years, before all appeals are settled and the case is finally decided. But whatever the outcome, the question the case has raised remains: does the public have a constitutional right to a healthy environment?

When I entered politics in 1966 by running for the Pennsylvania House of Representatives, I had no idea that anything I might do, if elected, would be relevant a half century later to the fundamental constitutional question of the next century, the public’s constitutional right to a healthy environment. But that is exactly what happened, through the unforeseeable circumstances

of history, politics, and judicial opinions. The Environmental Rights Amendment to the Pennsylvania Constitution that I drafted and led to enactment is indeed the sound basis for answering the question posed by *The New Yorker* magazine's headline.

How this came to be is the subject of this book. The story begins in the raw politics of Northumberland County, Pennsylvania, in 1966, moves to the Pennsylvania House of Representatives and its environmental revolution, and continues to the creation of Article I, Section 27, and its overwhelming approval by Pennsylvania voters in 1971.

The story cannot be told in the isolation of Pennsylvania politics. It must be appreciated in the context of American environmental history. I show how the national forces of environmental arousal came together with Pennsylvania's environmental revolution in the chamber of the Pennsylvania House of Representatives on its first Earth Day on April 14, 1970.

Climate change was not a factor in environmental protection efforts on May 18, 1971. In the half century since then, it has become the overriding threat to the environment of the planet. This new environmental threat knows no geographical boundary lines. I have expanded the story of Article I, Section 27, to demonstrate how its principles can be the basis for addressing climate change in the rest of the world. The story concludes with a call for the federal government's leadership to seek a national environmental rights amendment to the United States Constitution based on Article I, Section 27, and a treaty to expand its reach to the international community.

There are countless speeches, rallies, demonstrations, and news reports about climate change every day. They warn of the danger of global warming and call for action, but unfortunately, virtually none of them discuss constitutional law as a critical part of the answer.

Just as important, the energy and spirit shown by rallies, speeches, and Earth Day celebrations needs to be given a focus and transformed into political action. Without such action, the planet will not be saved.

The principles of Article I, Section 27, provide a sound legal basis for making governments responsible for the environment by serving as trustees of the environment and natural resources for future generations. With the provisions of Article I, Section 27, in a constitution, the public has a basis for compelling the government to act. Citizens can bring lawsuits against the government to force action. Rallies, demonstrations, speeches, and news reports cannot do this. Julia Olson, the attorney who is spearheading the *Juliana* case, would have a considerably easier task if she could rely on an

explicit environmental rights provision in the United States Constitution instead of an implicit Fifth Amendment protection.

Although the May 18, 2021, fiftieth anniversary of the birth of Pennsylvania's Environmental Rights Amendment is reason for celebration, we need to do more than celebrate. I hope to project the amendment fifty years into the future and show how it can be used to help save our planet.

Article I, Section 27, sets forth three essential principles:

1. The people have a right to a healthy environment;
2. Public natural resources are the common property of all people; and
3. The government is the trustee with responsibility to maintain that public estate.

This book is about Article I, Section 27, and how these principles can be applied in an effective way to impact the movement to stop climate change, both in the United States and in the rest of the world. The book is written for the public at large, not particularly for scientists, environmental activists, or lawyers. Because constitutions provide the framework of government and reflect our values as a society, they are too important to be left to lawyers alone. They must be understood and supported by the public as a whole. I have tried, therefore, to use this book to explain Pennsylvania's Environmental Rights Amendment and the conditions that created it so every reader will better understand their significance in a world of climate change.

The book is presented in four parts. Part 1, *The Birth of Article I, Section 27, on May 18, 1971*, in Chapters 1 and 2, describes my entry into the political arena in 1966 and how I won my seat in the Pennsylvania House of Representatives. I start with this for two reasons. First, if I had not won that election, none of this would have happened.<sup>1</sup> Second, it reveals the important work Basse Beck did to assist my campaign and to influence the text of the amendment.

Chapter 3 tells of the environmental revolution that swept through the Pennsylvania House under the leadership of John Laudadio and the raft of new environmental laws enacted. In the midst of this, as described in Chapter 4, I conceived the idea of a state constitutional amendment on the environment. How that became legislation and progressed toward its overwhelming approval by the voters is told in Chapter 4.

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1. As a member of the Pennsylvania House who was elected by defeating the senior Republican over an environmental issue, I had my proposal for a constitutional amendment taken seriously. If I had not been in the Pennsylvania House, my proposal would not have received that attention.

Part 2, *The United States Through May 18, 1971*, is devoted to the environmental history of the United States through May 18, 1971. Chapter 5 explains the environmental silence of the United States Constitution of 1787. This silence allowed the raw entrepreneurial forces that exploited the natural resources of states like Pennsylvania and Montana in the years following the Civil War.

The unbridled exploitation of our natural resources had ebbed considerably by the 1960s, when the American public finally aroused itself to the need for environmental protection.

Chapter 6 discusses the work of Stewart Udall, Rachel Carson, and Gaylord Nelson in the awakening, when the environmental movement arose. The first Earth Day in 1970 marked the end of the old era and the beginning of a new one.

Part 3, *The Half Century Since May 18, 1971*, summarizes efforts to protect the environment in the half century since May 18, 1971. Chapter 7 tells the amazing story of how Article I, Section 27, was almost smothered to death by the Pennsylvania courts. Chief Justice Ronald Castille of the Pennsylvania Supreme Court resurrected it in 2013, as described in Chapter 8, by telling the state's judiciary to read and implement the plain English language of the amendment in interpreting Article I, Section 27.

Part 3's Chapter 9 looks at what the other forty-nine states have done to add environmental provisions to their constitutions. It discusses why there is still no explicit environmental provision in the United States Constitution and examines the *Juliana* case and other lawsuits. Chapter 10 describes efforts to deal with climate change at the international level, including the United Nations, the agreements at Kyoto and Paris, and environmental provisions in national constitutions.

This part also includes Chapter 11 on climate change, but it does not try to prove climate change or rant against its causes. It assumes that the science of climate change is sound, and that climate change is a clear and present danger. Instead of relying on a list of scientific conclusions, it provides the observations of citizens who are not lawyers or climate scientists but have firsthand knowledge of the impact of climate change.

Part 4, *May 18, 2071, and the Leadership of the United States*, projects the use of Article I, Section 27, forward to May 18, 2071. The world cannot avoid the climate change disaster without strong leadership from the United States.

Chapter 12 calls for an environmental amendment to the United States Constitution and provides the text for such a proposal.



As discussed in Chapter 13, the United States can also assert its leadership overseas by using the principles of Article I, Section 27, as the core values of a climate-centered foreign policy. Chapter 14 describes the obligation of the United States, as the “indispensable party,” to lead in reducing global warming. The coronavirus pandemic and its relationship to climate change is analyzed and discussed.

The *Afterword*, written following the November 3, 2020, U.S. presidential election, discusses the impact of the election results on the future of the environment and the issues discussed in the book.

Interspersed throughout the book are a number of mini-biographies of environmental “game changers”—individuals whose actions produced a significant change in our view of the environment:

1. **Basse Beck**, whose speeches and “Up and Down the River” columns inculcated in me the idea that rivers and other natural resources, like the air, belong to the public estate and should be held in trust for future generations.
2. **Rachel Carson**, whose 1962 book *Silent Spring* and indefatigable spirit overcame the immense opposition from the chemical industry and the U.S. Department of Agriculture to ban the pesticide DDT.
3. **United States Senator Gaylord Nelson**, who conceived of Earth Day as a way to focus attention on the environment, and whose leadership made it happen.
4. **Chief Justice Ronald Castille**, who as chief justice of the Pennsylvania Supreme Court told the state’s judiciary to read the plain English language in interpreting Article I, Section 27, and thereby restored it to the full vitality intended.
5. **Julia Olson**, who founded Our Children’s Trust in Eugene, Oregon, and is leading the litigation to establish the right to a healthy environment under the Fifth Amendment to the United States Constitution.

The Appendices provide additional useful information for readers:

- I. Two excerpts from Basse Beck’s “Up and Down the River” columns;
- II. Extracts from the *Pennsylvania Legislative Journal* of April 14, 1970;
- III. A table of environmental provisions in other states’ constitutions showing how they compare to Pennsylvania’s Article I, Section 27;

- IV. A list of environmental rights amendments to the United States Constitution proposed since 1968;
- V. A table showing which nations recognize a right to a healthy environment; and
- VI. The Green New Deal, H. Res. 109 (2019).

What our climate will be like in 2071 depends in large measure on what we do in the immediate future to enact the Article I, Section 27, principles into our national Constitution. I hope this book increases the public understanding of this and that it will encourage people to seek its enactment to place responsibility on governments and then compel them to act on climate change and save the planet.

*Franklin L. Kury*  
Harrisburg, Pennsylvania  
December 1, 2020