



**Environment and Transportation Committee**  
**HB 596: Constitutional Amendment: Environmental Rights**  
**Hearing Date: February 23, 2022**  
**Favorable**

**STATEMENT OF INTENT OF**  
**THE 2022 MARYLAND ENVIRONMENTAL HUMAN RIGHTS AMENDMENT HB0596**  
**as introduced, 444<sup>th</sup> Session of the Maryland General Assembly**  
**(January 12 through April 11, 2022)**

Now before the House Committee on Environment and Transportation is HB 0596, which, if passed, will submit to the voters the proposed Article 48 of the Maryland Declaration of Rights, referred to herein as the Environmental Human Rights Amendment (“EHRA”).<sup>1</sup> The EHRA begins by recognizing, at the highest level of Maryland law, that every person’s right to a healthful, sustainable environment is fundamental, inalienable, and not to be infringed. It thus lays an enduring foundation for the comprehensive and effective protection of that right. In addition, the EHRA separately prescribes the State’s duty, as trustee, to safeguard Maryland’s natural resources for the benefit of every person, including present and future generations. This analysis, prepared by the Maryland Campaign for Environmental Human Rights,<sup>2</sup> elaborates on the EHRA’s purpose and effect, consistent with settled principles of constitutional interpretation.<sup>3</sup>

## **I. THE REASONS FOR A CONSTITUTIONAL AMENDMENT**

“[S]tates in the United States have a long tradition of constitutionalizing environmental protection.”<sup>4</sup> Maryland is in the minority of States whose fundamental charters have no provision that protects the environment or natural resources.<sup>5</sup> It is long past time to align the Declaration of Rights with the views of Marylanders as to “the fundamental rights of humankind.”<sup>6</sup> As Senate Judiciary Committee Chair Will Smith recently observed, “studies show that without instituting significant protections, between 2027 and 2042 we will face seismic, dangerous, and irreversible shifts in the earth’s operating systems.”<sup>7</sup> Even today, despite “the principle of equal protection of the laws” to which this State subscribes,<sup>8</sup> many Marylanders—a majority of whom are members of historically disadvantaged communities—are facing hostile environmental conditions. These conditions inhibit the full expression of their human dignity.

The EHRA does not supplant legislation intended to remedy these problems. But it will be the polestar for the State’s legislature, executive, and judiciary as they, respectively, create, implement, and interpret those remedies.<sup>9</sup> To the extent that existing remedies are, or later will prove, inadequate to ensure every person’s right to a healthful and sustainable environment, or to resist further degradation of the State’s natural resources, the right to a healthful and sustainable environment will serve as a self-executing floor of protection. The State’s trusteeship duties will in turn undergird its own authorities to conserve, protect and enhance its natural resources.

## **II. THE MEANING OF THE PROPOSED AMENDMENT**

The EHRA is simply worded, like other articles of the Declaration of Rights. But it is not a mere statement of principles. It is a directive capable of execution.<sup>10</sup> That directive has two parts. First, in Subsections A and B, the EHRA enshrines an individual, enforceable right to a

healthful and sustainable environment that is already recognized in Maryland law.<sup>11</sup> Second, in Subsection C, the EHRA defines the scope of the natural resources of which the government is trustee and the duties that the trusteeship imposes on the State. The preamble to this legislation recites four of the foundational truths that underlie and motivate the EHRA. The text of each of these distinct portions of the legislation is reproduced and further explained below.

### **Preamble**

The four preambular statements will not appear in the Declaration of Rights. They do not alter the EHRA's scope, but they do supply critical background and context for the amendment.<sup>12</sup>

#### ***1. All living things are dependent on the gifts of a healthful environment.***

*Healthful* is defined as “beneficial to health of body or mind.”<sup>13</sup> *A healthful environment* embodies those attributes of the environment that pertain to the health of *living things*. The law of Maryland has long recognized the individual right of “[e]ach person ... to a healthful environment.”<sup>14</sup> That right, however, has yet to be secured.<sup>15</sup>

#### ***2. The full expression of human dignity is incompatible with a degraded environment.***

*Human dignity* is the recognition that every human being has equal worth that is inherent and inalienable. This State “recognizes and honors the value and dignity of every person.”<sup>16</sup>

Dignity is inexorably intertwined with environmental outcomes. *A degraded environment* frustrates the realization of the civil, political, and socioeconomic rights that advance human dignity—many of which already are manifest in the Maryland Declaration of Rights. A healthful and sustainable environment thus is indispensable to the expression of human dignity. This is not an idea “which may be in the womb of time, but whose birth is distant.”<sup>17</sup> It has been fifty years since the Stockholm Declaration on the Human Environment—for which the United States was a chief proponent and signatory—proclaimed, as its first principle, the “common conviction” that

every individual “has the fundamental right to freedom, equality and adequate conditions of life, in an environment *of a quality that permits a life of dignity and well-being.*”<sup>18</sup> Numerous courts have invoked the principle of human dignity when providing redress for environmental harms.<sup>19</sup>

**3. *A sustainable, regenerative ecosystem and stable climate are essential to support a vibrant society and economy.***

As Maryland law has long recognized, “[t]he protection, preservation, and enhancement of the State’s diverse environment is necessary for the maintenance of the public health and welfare and the continued viability of the economy of the State.”<sup>20</sup> Because all economic activity is dependent upon the environment and its underlying resource base,<sup>21</sup> ensuring *a vibrant society and economy* for future generations means that present-day economic activity cannot destabilize the climate or other elements of the State’s ecosystem. A *sustainable ecosystem* aligns economic activity with both environmental protection and human well-being.<sup>22</sup> A *regenerative ecosystem* restores, renews, and revitalizes our sources of energy, food, and materials while ensuring that these life-sustaining resources remain available for both current and future generations. A *stable climate*, especially, is essential to human flourishing—as the General Assembly recently found, “[g]lobal warming poses a serious threat to the State’s future health, well-being, and prosperity,” and “endanger[s] the public health and welfare” of its people.<sup>23</sup>

**4. *Access to a healthful and sustainable environment is a birthright of every person.***

This last preambular statement recognizes the individual right that follows directly from the first three statements. Dignity is *a birthright of every person*, and, for reasons already stated, one’s dignity cannot be fully realized without *access to a healthful and sustainable environment*.

### **Subsection A**

***Every person has the fundamental and inalienable right to a healthful and sustainable environment.***

Section A declares the right of each person to a healthful and sustainable environment.

The word *every* means the same thing as *each*. Its usage here confirms that the EHRA creates a specific individual right rather than conferring a general benefit on the public at large.<sup>24</sup> The term *person* does not include the State.<sup>25</sup> The descriptors *fundamental* and *inalienable*, which the General Assembly has already attached to the right to a healthful environment,<sup>26</sup> ensure a level of protection comparable to that afforded by other Articles of the Declaration of Rights,<sup>27</sup> and by provisions similar to Article 48 that appear in the constitutions of other states.<sup>28</sup> As previously explained, *a healthful and sustainable environment* secures all environmental amenities essential to the sustenance of life and human dignity, including a stable climate, for present generations and those to come.

State courts interpreting this right will not write on a blank slate. In addition to the substantial body of Maryland caselaw interpreting the Maryland laws addressing similar topics, Maryland courts will consider the work of the Maryland General Assembly and Executive, as well as their counterparts in other jurisdictions with similar constitutional rights. Thirty-six states have constitutional provisions that protect the environment or natural resources.<sup>29</sup> Of those, seven States (and counting) have amended their constitutions since the 1970s to confer an individual right to a healthy environment.<sup>30</sup> Those amendments have served as a backstop against violations of individuals' right to a healthy environment, without "unduly displac[ing] legislative prerogative" to enact environmental policies, without hampering economic development, and without diminishing societal prosperity.<sup>31</sup> There is no reason whatsoever to expect that Maryland will buck the trend of "beneficial operation of similar provisions in other jurisdictions."<sup>32</sup>

## **Subsection B**

***The right enumerated under subsection (A) of this section may not be infringed.***

Subsection B renders the right to a healthful and sustainable environment, as declared in Subsection A, self-executing.<sup>33</sup> Consistent with the General Assembly’s drafting convention, “‘*may not*’ has a mandatory negative effect and establishes a prohibition.”<sup>34</sup> Like other Declaration of Rights provisions, the right conferred by Subsection (A) can be upheld against the government and is independent of Subsection (C).

## **Subsection C**

***The State shall:***

- (1) Serve as the trustee of the State’s natural resources, including the air, land, water, wildlife, and ecosystems of the State; and***
- (2) Conserve, protect, and enhance the State’s natural resources for the benefit of every person, including present and future generations.***

Subsection C is a distinct element of the EHRA that declares and defines the trusteeship of the government over the State’s natural resources. This provision likewise is designed to be self-executing.<sup>35</sup>

The trustee in this case is *the State*, which includes its political subdivisions.<sup>36</sup> The trust beneficiaries are *every person*—with those terms carrying the same meaning as in Subsection A—and include both *present and future generations*. These beneficiaries are protected both individually and in the aggregate. Put another way, the trust that Subsection C establishes will further the general, long-term social and economic health of individuals and society as a whole.

The trust corpus is *the State’s natural resources*, which *include*, but are not limited to, its *air, land, water, wildlife, and ecosystems*.<sup>37</sup> The modifier of *the State* excludes private property from the trust corpus—and thus ensures that the provision’s adoption will not be interpreted as an appropriation of private property. Under the common law, the State holds both navigable

waters and the lands beneath them in trust for the public,<sup>38</sup> and certain Maryland and federal statutes have established other trust relationships in respect to other natural resources.<sup>39</sup> The EHRA elevates and clarifies the scope of the public-trust duties of the State with respect to its natural resources.

The trust duties set out in Subsection C resemble the duties of the State as natural resource trustee that already are recognized in statutory provisions and at common law. In particular, the State is to *conserve, protect, and enhance* the State's natural resources.<sup>40</sup> Subsection C does not prohibit use of these resources by and for the public's benefit, so long as the resources are not damaged or degraded such that they cannot be fully enjoyed by present or future generations. As the Court of Appeals has observed, "the improper use and exploitation of natural resources represent an invasion of 'the right of every resident of Maryland to an environment free from pollution.'"<sup>41</sup>

These trusteeship duties will inform the breadth and exercise of the State's power insofar as that power is "calculated to protect the environment and to preserve ... [natural resources] or public use for present and future generations of citizens."<sup>42</sup> They also fortify the government's ability to establish and implement strong and effective natural resource laws, which may prove increasingly necessary given inertia or backsliding in federal law or the laws of other states.<sup>43</sup> Subsection C also boosts the ability of the State and its political subdivisions to respond to unlawful activities that harm natural resources.<sup>44</sup>

### **III. THE URGENCY OF THIS LEGISLATION**

Senator Will Smith has stated that "[n]othing we do this session and nothing we do in our own committees matters, if we don't ensure that we have a healthy environment for our children and

our grandchildren. We must secure those rights with a constitutional amendment.”<sup>45</sup> Not only will constitutionalizing the right to a healthful and sustainable environment make it a permanent feature at the highest level of this State’s legal system, the experience of other jurisdictions has proven that it also will also foster the values that this right represents far more than a piece of normal legislation (however vital) ever could.<sup>46</sup> Inscribing the public-trust doctrine in the Maryland Constitution also will augment the ability of State and local governments to respond to the unprecedented and future unknowable threats to Maryland’s natural resources.<sup>47</sup>

The Intergovernmental Panel on Climate Change has sounded the alarm: “climate-related threats to Americans’ physical, social, and economic well-being are rising.”<sup>48</sup> These threats merit all manner of legislation from this body, but the intergenerational dimension to this challenge—the existential threat to Marylanders today and in future generations—calls for a constitutional response as well.<sup>49</sup> This is a human rights issue of the highest order.

It is also an issue of justice, the primary focus of the Declaration of Rights. As residents of a maritime state, all Marylanders are confronting disproportionate threats from climate change.<sup>50</sup> The State’s historically disadvantaged communities are even less able to prepare for and recover from the extreme weather events it creates and exacerbates, including excessive heat, flooding, and air pollution.<sup>51</sup> Environmental justice—which necessitates “the *fair treatment* ... of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies,”<sup>52</sup>—demands that no resident of this State confront an unhealthy or unsustainable environment. “The fact that people who live, learn, work, and play in America’s most polluted environments are commonly people of color and the poor is not new information.”<sup>53</sup> This body must not avert its eyes from that centuries-old reality. Securing environmental justice for everyone is a matter of such importance



that it cannot be left solely to periodic statutory initiatives. It must be inscribed as an overarching requirement in this State’s most important governing document.<sup>54</sup>

“[E]nvironmental constitutionalism works.”<sup>55</sup> We urge swift passage of this legislation.

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<sup>1</sup> HB0596 was introduced on January 31, 2022, by Delegate Wanika Fisher and 28 co-sponsors. Parallel legislation, SB783, was introduced by Senate Judiciary Committee Chair Will Smith and 15 co-sponsors on February 7, 2022.

<sup>2</sup> This analysis has benefited from, and is informed by, correspondence from the Office of the Maryland Attorney General, and inputs from the MDEHR Advisory Circle and other legal, health and environmental policy experts.

<sup>3</sup> See *Bernstein v. State*, 422 Md. 36 (2011); *Johns Hopkins Univ. v. Williams*, 199 Md. 382, 386 (1952) (quoting *Norris v. Mayor & City Council of Baltimore*, 172 Md. 667, 675, 676 (1937)); *Baltimore v. State*, 15 Md. 376, 459 (1860); see also *Life of the Land v. Land Use Comm’n*, 623 P.2d 431, 438 & n.5 (Haw. 1981).

<sup>4</sup> James R. May, *Subnational Environmental Constitutionalism and Reform in New York State*, 38 Pace L. Rev. 121, 135 (2017).

<sup>5</sup> See B. Adams et al., *Environmental and Natural Resources Provisions in State Constitutions*, 22 J. Land, Res. & Env’tl. L. 73 (2002); Franklin Kury, *THE CONSTITUTIONAL QUESTION TO SAVE THE PLANET* 165-77 (Env’tl. Law Inst. 2021).

<sup>6</sup> Dan Friedman, *The Maryland State Constitution*, Oxford Commentaries on the State Constitutions of the United States, at 25 (2011).

<sup>7</sup> Sen. Will Smith, Remarks at Citizen Rally in support of EHRA, January 14, 2022.

<sup>8</sup> *Manikhi v. Mass Transit Admin.*, 360 M.D. 333, 361 (2000) (quoting *Bd. of Supervisors v. Goodsell*, 284 Md. 279, 293 n.7 (1979)).

<sup>9</sup> See John Dernbach, *The Potential Meanings of a Constitutional Public Trust*, 45 Env’tl. L. 463, 515 (2015). A survey by a leading scholar found that in 78 out of 95 nations, other environmental laws were strengthened after the right to a healthful environment gained constitutional status. David R. Boyd, “The Effectiveness of Constitutional Environmental Rights,” Yale UNITAR Workshop, at 6 (Apr. 2013).

<sup>10</sup> See *Benson v. State*, 389 Md. 615 (2005).

<sup>11</sup> Md. Code Ann., Nat. Res. § 1-302(d).

<sup>12</sup> Cf. *Montgomery County v. Deibler*, 423 Md. 54, 72 (2011).

<sup>13</sup> Merriam-Webster’s Dictionary (2022); see also Black’s Law Dictionary (11th ed. 2019) (defining “health” as “the quality, state, or condition of being sound or whole in body, mind, or soul”). See,

*Williams v. State*, 329 Md. 1, 15, 616 A.2d 1275, 1282 (1992); *Bd. of Educ. of Prince George's County v. Marks-Sloan*, 428 Md. 1 (2012).

<sup>14</sup> Md. Nat. Res. Code § 1-302(d).

<sup>15</sup> While acknowledging the existence of the right, the Maryland has yet to ensure its protection. *See* Russell B. Stevenson Jr., *The Maryland Environmental Policy Act: Resurrecting a Tool for Environmental Protection* 45 *Env'tl. L. Rep.* 10,074, 10,076 (2015) (“Notwithstanding [this] clear mandate that state agencies take environmental considerations seriously in carrying out their missions, its provisions have remained essentially dormant since it was adopted in 1973.”).

<sup>16</sup> *See, e.g.*, Md. State Personnel & Pensions Code § 2-302(a); *Montgomery v. ECI*, 835 A.2d 169, 377 Md. 615, at 181 (Md. 2003).

<sup>17</sup> *Specter Motor Serv. v. Walsh*, 139 F.2d 809, 823 (2d Cir. 1943) (Hand, J., dissenting).

<sup>18</sup> Stockholm Declaration on the Human Environment, Principle 1 (1972) (emphasis added).

<sup>19</sup> *See* Erin Daly & James R. May, “Environmental Dignity Rights,” in *THE EFFECTIVENESS OF ENVIRONMENTAL LAW* (2017).

<sup>20</sup> Md. Nat. Res. Code § 1-302(b).

<sup>21</sup> *See* Sen. Gaylord Nelson, *BEYOND EARTH DAY: FULFILLING THE PROMISE* (2002).

<sup>22</sup> U.S. Environmental Protection Agency, “Sustainability and the ROE,” EPA’s Report on the Environment (ROE) available at <https://www.epa.gov/report-environment/sustainability-and-roe> (last visited Feb. 19, 2022). The term “sustainable” appears repeatedly in Maryland statutes. *E.g.*, Md. Pub. Util. Code § 21-104(a)(2)(ii); Md. State Fin. & Proc. Code §§ 3-602.1(a)(2)(ii), 5A-303(a)(16); *see also* Exec. Order 13,154, § 19(l), reprinted at 74 *Fed. Reg.* 52,117, 52,126 (Oct. 8, 2009) (defining “sustainability” as “to create and maintain conditions, under which humans and nature can exist in productive harmony, that permit fulfilling the social, economic, and other requirements of present and future generations”).

<sup>23</sup> Md. Env’t Code § 2-1201. *See also* Intergovernmental Panel on Climate Change, *Sixth Assessment Report* (2021).

<sup>24</sup> *See Widgeon v. E. Shore Hosp. Ctr.*, 300 Md. 520, 536 (1984). Articles 13, 19, and 40 of the Declaration of Rights use “every” in a similar fashion.

<sup>25</sup> The Declaration of Rights protects private citizens and legal entities against government overreach. *See Anderson v. Baker*, 23 Md. 531, 628 (1865). The rights vested in government are conferred in separate parts of the Maryland Constitution. Courts in other jurisdictions have interpreted rights comparable to that in Article 48, Section A not to extend to governmental entities. *E.g., Robinson Twp. v. Commonwealth*, 83 A.3d 901 (Pa. 2013).

<sup>26</sup> Md. Nat. Res. Code § 1-302(d). *See also Bausch & Lomb Inc. v. Utica Mut. Ins. Co.*, 330 Md. 758, 785-86 (1993) (“improper use and exploitation of natural resources represent an invasion of ‘the right of every resident of Maryland to an environment free from pollution’” (quoting Md. Nat. Res. Code § 1-502))

<sup>27</sup> *See Koshko v. Haining*, 398 Md. 404, 431 (2007) (“In matters implicating state interference with a fundamental right we generally apply the strict scrutiny standard.”).

<sup>28</sup> *See Mont. Env'tl. Info. Ctr. v. Dep't of Env'tl. Quality*, 988 P.2d 1236, 1245-46 (Mont. 1999).

<sup>29</sup> New York Const. art. I, § 19 (effective Jan. 1, 2022); May, *Subnational Environmental Constitutionalism*, 38 Pace L. Rev. at 135; Franklin Kury, *THE CONSTITUTIONAL QUESTION TO SAVE THE PLANET* 165-77 (Env'tl. Law Inst. 2021).

<sup>30</sup> Illinois Const. art. XI, § 2 (effective July 1, 1971), Pennsylvania Const. art. I, § 27 (effective May 18, 1971), Montana Const. art. II, § 3 (effective July 1, 1973), Hawaii Const. art. XI, § 9 (effective Jan. 1, 1979), Massachusetts Const. article of amendment XLIX (effective Nov. 7, 1972); New York Const. art. I, § 19 (effective Jan. 1, 2022).

<sup>31</sup> N.Y. State Bar Ass'n Env'tl. & Energy Law Section, *Report and Recommendations Concerning Environmental Aspects of the New York State Constitution*, 38 Pace L. Rev. 182, 190 (2017).

<sup>32</sup> *Id.* at 188-89; *see also* Franklin Kury, *THE CONSTITUTIONAL QUESTION TO SAVE THE PLANET* 165-77 (Env'tl. Law Inst. 2021).

<sup>33</sup> *Espina v. Jackson*, 442 Md. 311, 321 n.7 (2015). Courts in other jurisdictions with similar provisions have deemed them self-executing. *See, e.g., Robinson Twp.*, 83 A.3d 901, 964 n.52 (Pa. 2013); *Cty. of Hawaii v. Ala Loop Homeowners*, 235 P.3d 1103, 1129 (Haw. 2010).

<sup>34</sup> Md. Code, Gen. Provisions § 1-203 (emphasis added).

<sup>35</sup> *See Pa. Env'tl. Def. Found. v. Commonwealth*, 161 A.3d 911, 937 (Pa. 2015) (reaching this conclusion for comparable public-trust provision in Pennsylvania Constitution).

<sup>36</sup> *See Firestone Tire & Rubber Co. v. Supervisors of Assessments of Wicomico Cty.*, 275 Md. 349, 352 (1975). *See* Md. Decl. of Rights, art. 6 (“[A]ll persons invested with the Legislative or Executive powers of Government are the Trustees of the Public, and, as such, accountable for their conduct.”); *DiPino v. Davis*, 354 Md. 18, 50-51 (1999).

<sup>37</sup> *See* Md. Code, Gen. Provisions § 1-110 (explaining that “including” means “including by way of illustration and not by way of limitation”); *Robinson Twp.*, 83 A.3d at 955.

<sup>38</sup> *See Anne Arundel Cty. v. City of Annapolis*, 352 Md. 117, 132-33 (1998).

<sup>39</sup> The State is a designated statutory trustee under 42 U.S. Code § 9607(f)(b) of the Comprehensive Environmental Response, Compensation, and Liability Act and 33 U.S.C. § 2706(a)(2) of the Oil Pollution Act of 1990, responsible for natural resources “belonging to, managed by, controlled by, or appertaining to” the State. and. *See also* 33 U.S.C. § 2706(b)(3) and (c)(2). In addition, the General Assembly previously has recognized that State agencies “are stewards of the air, land, water, living and

historic resources,” Md. Nat. Res. Code § 1-302(c). The General Assembly also has established a charitable trust “to conserve, improve, stimulate, and perpetuate the aesthetic, natural, health and welfare, scenic, and cultural qualities of the environment including, but not limited to land, water, air, wildlife, scenic qualities, open spaces, buildings or any interest therein, and other appurtenances pertaining in any way to the State.” Md. Nat. Res. Code § 3-201(a). But the State’s natural resource trustee authorities and responsibilities are not recognized in Maryland’s Constitution. The time is long overdue to “elevate[] the public trust doctrine to the level of a constitutional mandate.” *In re Water Use Permit Applications*, 9 P.3d 409, 443 (Haw. 2000).

<sup>40</sup> This language is drawn in significant part from Maryland statutory law. For example, the Maryland Environmental Policy Act, which provides that “the protection, preservation, and enhancement of the State’s diverse environment is necessary for the maintenance of the public health and welfare and the continued viability of the economy of the State and is a matter of the highest public priority.” Md. Nat. Res. Code § 1-302(b). *Id.* § 3-201(a) (requiring Maryland Environmental Trust “to conserve, improve, stimulate, and perpetuate ... the environment”); *id.* § 5-1203 (mandating both “protection” and “preservation” of State wildland areas).

<sup>41</sup> *Bausch & Lomb Inc. v. Utica Mut. Ins. Co.*, 330 Md. 758, 785-86 (1993) (quoting Md. Nat. Res. Code § 1-502).

<sup>42</sup> *Bureau of Mines v. George’s Creek Coal & Land Co.*, 272 Md. 143, 175 (1974).

<sup>43</sup> See James A. Gardner, *State Constitutional Rights as Resistance to National Power: Toward a Functional Theory of State Constitutions*, 91 Geo. L.J. 1003, 1004 (2003).

<sup>44</sup> See *Massachusetts v. EPA*, 549 U.S. 497, 522-23 (2007); *Robinson Twp.*, 83 A.3d at 645 (finding that public-trust provision of Pennsylvania Constitution “establishes a nascent framework for the Commonwealth to participate affirmatively in the development and enforcement of [environmental] rights”); see also, e.g., *Rhode Island v. Chevron*, No. PC-2018-4716 (R.I. Super. Ct. July 2, 2018) (complaint including public-trust claims, grounded in Art. I, § 17 of the Rhode Island Constitution, filed against major oil companies for climate-change damages).

<sup>45</sup> Sen. Will Smith, Remarks at Citizen Rally, *supra*.

<sup>46</sup> Dernbach, *Potential Meanings*, 45 *Envtl. L. Rep.* at 471-72.

<sup>47</sup> See Robin Kundis Craig, *Adapting to Climate Change: The Potential Role of State Common-Law Public Trust Doctrines*, 34 *Vt. L. Rev.* 781 (2009).

<sup>48</sup> Jay, A. et al., *IMPACTS, RISKS, AND ADAPTATION IN THE UNITED STATES: FOURTH NATIONAL CLIMATE ASSESSMENT, VOLUME II* (Reidmiller et al. eds.) (2018), Ch. 1 at 36.

<sup>49</sup> See N.Y. State Bar Ass’n, *Report and Recommendations*, 38 *Pace L. Rev.* at 189 (noting the role of a constitutional amendment in responding to the threats posed by climate change); Barton H. Thompson, Jr., *Constitutionalizing the Environment: The History and Future of Montana’s Environmental Provisions*, 64 *Mont. L. Rev.* 157, 198 (2003) (reasoning that the “normative argument for constitutional

intervention is stronger” with respect to “[e]nvironmental issues that involve future generations, such as ... global climate change”)

<sup>50</sup> "[T]he General Assembly has recognized that '[g]lobal warming poses a serious threat to the State's future health, well-being, and prosperity[.]' Maryland Code, Environment Article ('EN'), § 2-1201(2)..." cited in *Md. Office of People's Counsel v. Md. Pub. Serv. Comm'n*, 461 Md. 380, 192 A.3d 744 (Md. App. 2018). *See also*, MD Code EN 2-1305 Reporting on greenhouse reduction goal and impacts of climate change by State agencies (Maryland Code (2022 Edition)); COMAR 01.01.2014.14 Strengthening Climate Action in Maryland (Rescinds Executive Order 01.01.2007.07) (2022 Edition); COMAR 26.09.01.03 Incorporation by Reference (2022 Edition) [incorporating IPCC reports by reference].

<sup>51</sup> U.S. Eenvtl. Prot. Agency, CLIMATE CHANGE AND SOCIAL VULNERABILITY IN THE UNITED STATES: A FOCUS ON SIX IMPACTS (2021).

<sup>52</sup> U.S. Eenvtl. Prot. Agency, TOOLKIT FOR ASSESSING POTENTIAL ALLEGATIONS OF ENVIRONMENTAL INJUSTICE (2004) (EPA 300-R-04-002).

<sup>53</sup> Barry E. Hill, *Bending the Arc Toward Justice*, 37 *Eenvtl. Forum* 50 (2020).

<sup>54</sup> *See* Barry E. Hill, “Environmental Justice for All Must Be a Human Right Enforceable in U.S. State Constitutions,” in *A BETTER PLANET: BIG IDEAS FOR A SUSTAINABLE FUTURE* (Daniel C. Esty, ed.) (2019).

<sup>55</sup> *Id.* at 190.