

Primary talking points:
SJR 28-1 Right To a Healthy Environment

- Oregonians' lives and futures depend on a safe and healthy environment. This amendment puts this key value, that all Oregonians hold, into our State constitution. If passed by the voters, the State government will be required to do a better job to prevent environmental threats to the health and safety of Oregonians.
- RTHE makes our state and local governments' responsibility to protect Oregonians from human-caused environmental harm **EXPLICIT** in our Constitution. Protecting our communities should be our highest government's highest priority. RTHE clears the way for our leaders to do what must be done to protect our lives and futures.
- When the U.S. and Oregon constitutions were written, pollution meant nuisance issues like the smell of hog farms or water pollution from tanneries. Today, the health and safety of Oregonians are threatened by toxic pollutants in the air, water and soil and by climate change. This is about updating our constitution, and our rights, to protect us against the greatest threats we face today.
- Oregon's current system waits to address environmental threats until public pressure forces the Legislature to act. With huge threats looming, this is like driving at night without headlights. Preventing environmental disasters is much less costly than cleaning up after disasters.
- Passing the RTHE amendment will give agencies and their lawyers the power to proactively address threats to our health and safety. The current system limits them to waiting for a public outcry before addressing urgent environmental threats – **a recipe for continuous disasters.**
- In addition to the limited effectiveness of Oregon's current regulatory system, it also depends heavily on federal environmental laws including the Clean Air Act, the Clean Water Act, the National Environmental Policy Act (NEPA), and the Environmental Protection Agency's definitions of toxic levels to regulate our air, water, ecosystems, and climate systems. These bedrock environmental laws could be in severe jeopardy with the new administration's general approach against effective environmental protection.

OTHER TALKING POINTS

If you'd like to speak to Oregon's Reputation

Oregon enjoys a reputation of being environmentally friendly, perhaps due to the beauty of the natural resources we still have, but those in the know have a different story to tell. From [harmful amounts of nitrates in groundwater](#) to [damaged watersheds](#), our water is clearly not protected.

If you'd like to speak to Property Rights

All rights come with implied responsibilities. Many people believe that environmental protections mean restrictions on your ability to do what you want on your land, but that's a common misunderstanding. Property rights are a "bundle of rights" such as the right to use, exclude, transfer, enjoy, and control various aspects of your land in accordance with the law (such as zoning codes).

There is no such thing as a right to pollute, especially if it negatively affects your neighbors or the interests of others "downstream," literally or figuratively. The right will, however, help protect your use, enjoyment and value of your property by protecting it from harmful activities of others.

If you'd like to speak to the Costs of the Measure

- There is **no fiscal impact** for referring SJR28-1 to a future election ballot for the voters to decide whether this RTHE amendment is added to the Oregon Bill of Rights.
- Protecting our health and safety from environmental threats should not be left to the whims of politics. Every person, including children and future generations, deserves access to clean water and air, to live free from smoke/fires and other effects of climate change and to be able to continue to pursue our livelihoods.
- All three branches of state government have a role to play in securing our rights and futures, and in protecting our life support systems.
- The amendment would protect public health and safety by requiring the State government to prevent harm **before it happens**.
- The RTHE amendment is a preventive tool, to improve the oversight and regulation of industry by the Oregon state government.
 - **It is far less costly to prevent environmental harm, than to clean it up afterwards.**

The state should be self-motivated to prevent harm to air, water, ecosystems and to take faster action on climate change. These administrative actions will work to prevent further degradation of our water sources and the atmosphere that will take decades to reverse, if even possible.

If you'd like to speak to what Constitutional Amendments help make possible through litigation: Montana & Hawaii court wins

The Oregon movement for a Right to Healthy Environment is part of a national movement to add green amendments to state constitutions. Montana and Hawaii have successfully used their existing constitutional language to win lawsuits against their state governments in recent cases:

- **Hawaii: (6/21/24)**

- [Navahine v. Hawai'i \(suit against HDOT & Gov. Josh Green\)](#)
- The youths in the Our Children's Trust lawsuit [argued](#) that Hawaii was violating the state constitution by operating a transportation system that harms the climate and infringes upon the right to a clean and healthy environment. More specifically, they accused the Hawaii Department of Transportation of consistently prioritizing building highways over other types of transportation.
- "Climate change is indisputable," Director of Transportation Ed Sniffen said in the governor's statement. "Burying our heads in the sand and making it the next generation's problem is not pono," or not right.
- Settlement gave HDOT 1 year to re-write its transportation plan and implement transformative changes to Hawaii's transportation system to achieve zero emissions in all ground transportation, and inter-island sea and air transportation, by 2045.

- **Montana (12/18/24):**

- [Montana v. Held](#) - An Our Children's Trust constitutional climate lawsuit brought by 16 Montana youth sued to "protect the air, wildlife and their public lands that are threatened by drought, heat, fires, smoke, and floods." The District Court Judge declared in August 2023 that a Montana law requiring the State *"to turn a blind eye to young people's climate injuries while promoting fossil fuel activities violates their constitutional rights to a clean and healthful environment, including a livable climate, their dignity, safety and equal protection of law."*
- The 70-page decision, authored by Chief Justice Mike McGrath, comes 16 months after Lewis and Clark District Court Judge Kathy Seeley ruled in the landmark Held v. Montana lawsuit, explicitly stating that the state's

greenhouse gas emissions are “proven to be a substantial factor in causing climate impacts to Montana’s environment, and harm and injury to the youth plaintiffs.” Seeley’s decision also rolled back two laws enacted by the 2023 legislature that changed the Montana Environmental Policy Act.

- *Article IX, Section 1, of the Montana Constitution:*
 - *(1) The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.*
 - *(2) The legislature shall provide for the administration and enforcement of this duty.*
 - *(3) The legislature shall provide adequate remedies for the protection of the environmental life support system from degradation and provide adequate remedies to prevent unreasonable depletion and degradation of natural resources.*
- Key statements from the Montana Supreme Court decision:
 - *Anthropogenic climate change is impacting, degrading, and depleting Montana’s environment and natural resources, including through increasing temperatures, changing precipitation patterns, increasing droughts and aridification, increasing extreme weather events, increasing severity and intensity of wildfires, and increasing glacial melt and loss.”*
 - *The District Court’s conclusion of law is affirmed: Montana’s right to a clean and healthful environment and environmental life support system includes a stable climate system, which is clearly within the object and true principles of the Framers inclusion of the right to a clean and healthful environment.*
 - *We reject the argument that the delegates—intending the strongest, all-encompassing environmental protections in the nation, both anticipatory and preventative, for present and future generations—would grant the State a free pass to pollute the Montana environment just because the rest of the world insisted on doing so.*

***Cherniak v. Oregon* Decision at Oregon Supreme Court (2020)**

What Happened in *Cherniak v. Oregon*:

- *Cherniak v. Oregon* was a youth-led lawsuit brought by Our Children’s Trust in 2011, arguing that the state has a constitutional duty to protect all natural resources—including the atmosphere—from climate change.
- After nearly a decade of litigation, the Oregon Supreme Court ruled against the youth in 2020, stating that only *navigable waters* fall under the public trust doctrine, leaving land, air, groundwater, and other resources unprotected.
- The ruling highlights a major gap in Oregon law: courts have refused to recognize the state’s duty to protect critical natural resources, and we don’t have another nine years to fight for incremental legal change as the climate crisis worsens.

Why *Cherniak* Matters for the RTHE Amendment:

- Around the world, courts are increasingly recognizing governments' legal responsibility to protect natural resources for future generations. But in Oregon, *Chernaik* made clear that without explicit constitutional protections, the courts will not step in to enforce climate protections.
- Chief Justice Martha Walters' powerful dissent criticized the ruling for sidestepping the state's constitutional responsibility and warned that the time to act is now.
- This is why the Green Amendment (SJ28-1) explicitly includes public trust doctrine protections for all natural resources and a stable climate—ensuring that future lawsuits don't face the same legal dead end as *Chernaik*. Enshrining these rights in the constitution guarantees that Oregon's natural resources are protected for future generations, without waiting on uncertain legal battles.

If you'd like to speak to Climate Change

Action in Oregon has been slow

Overview

While each U.S. state and almost all countries contribute a small fraction of global greenhouse gas (GHG) emissions annually, U.S. and China's emissions dwarf all other countries. The U.S. has contributed 25% of cumulative human-released CO₂ (carbon dioxide – the most important GHG). The second most is from China (13%)

<https://climatescience.org/advanced-emissions-by-country>. While each state's and most counties' emission contributions are small, widespread and serious reduction efforts are necessary to avoid global catastrophe. Several other states (HI, WA, CA, and some East Coast and Midwest states) have been more aggressive in reducing emissions of GHGs than Oregon.

Oregon agencies and the Legislature have not acted with sufficient urgency to reduce Oregon's GHG emissions. It is urgent that global GHG emissions be reduced to net zero as soon as possible. Oregon and a few other states can lead the way, as they have historically on many environmental issues. In the recent past both major political parties in Oregon supported environmental protection. The amendment points to the need for a stable climate.

Record Wildfires in the West from Climate Change

Unrestrained GHG emissions threaten the destruction of Oregon's farms, forests and fisheries in the next few decades. In just the last decade there have been record wildfires in Oregon, California, Colorado, Idaho, Montana, Nevada, Washington, Wyoming, Arizona, New Mexico, Texas/Oklahoma, Tennessee, Kansas, Hawaii and all western provinces in Canada https://en.wikipedia.org/wiki/List_of_wildfires.

These include the fires in Oregon on Labor Day 2020 and in Los Angeles during January 2025. The Oregon 2020 fire killed thousand-year-old trees in the Opal Creek Wilderness Area that have not been affected by logging or suppression of normal fires.

The science is clear that increased temperatures and droughts in the West and North America generally from climate change are responsible for the increased frequency and intensity of wildfires. The Oregon Legislature cannot sit idly by and allow this threat to Oregonians be unaddressed.

Oregon's Climate Protection Program (CPP)

The Environmental Quality Commission adopted a [second CPP rule](#) which is more lenient than the first. The court threw out the first CPP on procedural grounds, but it did not rule on the fossil fuel industry's substantive challenge, which the industry will likely raise against the second.

Even if fully and successfully implemented, the CPP does not address all climate elements in Oregon such as the state transportation plan. The CPP rule relies on a governor's order that could be repealed by a future governor, whereas a constitutional amendment such as SJR 28 – which can address any issue that affects public health and safety – can only be changed by a vote of the people.

Findings of the Oregon Climate Action Commission (OCAC)

The OCAC has found that Oregon could do much more to help stabilize the climate with net economic benefits to Oregon.

*In this [2024] biennial report, the Oregon Climate Action Commission (OCAC) strongly recommends that the Legislature direct new actions and fully fund existing priority climate programs. The Commission highlights additional actions the Legislature and agencies should take to help Oregon stay on track toward its greenhouse gas mitigation goals as outlined in the OCAC's Oregon Climate Action Roadmap to 2030 (Roadmap). **The Roadmap concluded that Oregon needs to act with greater ambition** [emphasis added] to advance a just and equitable clean energy transition and achieve the state's GHG reduction goals on an **accelerated timeline** [emphasis added], with a recommendation to achieve at least a 95 percent reduction below 1990 levels by 2050.*

<https://static1.squarespace.com/static/59c554e0f09ca40655ea6eb0/t/6737aca0fd0bf62d47d86c76/1731701924603/2024-OCAC-Biennial-Legislative-Report.pdf>

Unfortunately, according to preliminary emissions data, Oregon missed its 2020 GHG emission reduction goal by 13 percent. In 2021, the latest emissions data available, emissions grew to 19 percent above the 2020 goal. Back in 2011, the Oregon Global Warming Commission (OGWC), developed and delivered a Roadmap to 2020 to the Legislature, outlining

actions that could be taken to achieve the 2020 goal. The OGWC provided a progress report on the Roadmap to 2020 in 2013 highlighting the need for further action, and in 2015, the OGWC continued to raise the alarm that Oregon was off track to meet the 2020 goal. Yet, Oregon still missed its goal

<https://static1.squarespace.com/static/59c554e0f09ca40655ea6ebo/t/64275befc3f5d82a60b981b2/1680301043241/2023-Climate-Action-Roadmap.pdf>

More quotes about failure of Legislature to adequately address the climate crisis are available from Dec. 2024 Biennial Report from the The Oregon Climate Action Commission (OCAC)

<https://static1.squarespace.com/static/59c554e0f09ca40655ea6ebo/t/6737acaofd0bf62d47d86c76/1731701924603/2024-OCAC-Biennial-Legislative-Report.pdf>

Transportation and Climate Change

Oregon has maintained a schedule for zero-emission heavy duty trucks designed to support the transition of medium- and heavy-duty vehicles to zero-emission engines over time (Advanced Clean Truck rule). Still, only 40 percent of most new trucks must be zero-emission by 2032. New heavy-duty trucks will be on the road for 30 or 40 years.

[Frequently Asked Questions - Oregon's Advanced Clean Trucks Rule](#)

Oregon Groundwater Contamination

A 1999 report by the U.S. Geological Survey (USGS) identifies Oregon as one of nine states having the highest concentrations of nitrates in shallow groundwater in the nation (Hoppe et al., 2011). The number of groundwater wells in Oregon is estimated to be 350,000 and 16% of the Oregon population uses groundwater wells for drinking water (Hoppe et al., 2011). Sources of groundwater pollution include, among others, fertilizer runoff, herbicides, pesticides, and fungicides from agricultural fields, treating farmland with manures from concentrated feedlots and dairies, and localized contamination from industrial sources.

The Port of Morrow in Morrow County as well as the lower Umatilla Basin have been experiencing nitrate contamination in well water for several decades (30 years or more), and there is growing concern over nitrates in Bend drinking water. High levels of nitrates are also found in the shallow aquifers of the Southern Willamette Valley.

Oregon Surface Water Impairment

Based upon observed levels of impairment, Oregon was identified in a report by the environmental integrity project as having the most miles (over 120,000 miles) of

polluted or impaired waterways in the Nation. Also in Oregon, 95% of lakes have water too contaminated to be suitable for drinking water.

- <https://oregoncapitalchronicle.com/2022/03/23/oregon-high-among-states-with-most-polluted-waterways-according-to-new-analysis/>
- EPA 303D streams: listing by pollutant
<https://www.oregon.gov/deq/wq/Pages/epaApprovedIR.aspx>

Oregon Air Quality Issue: Diesel Pollution

Oregon has a history of slow implementation of rules to limit emissions of very fine particles (PM 2.5) from diesel engines. These particles are known to cause health problems and deaths in Oregon. Passage of the Right to a Healthy Environment (SJR 28) by the voters would give the Department of Environmental Quality (DEQ) a better foundation to protect health from air pollution.

Oregon's health target for reducing diesel pollution is one-thirtieth as stringent as in Washington or California. And Oregon is not even close to meeting its goal. Diesel pollution contributes to what the U.S. Environmental Protection Agency estimates are as many as 460 premature deaths a year in Oregon.

(<https://projects.oregonlive.com/polluted-by-money/part-3> March 8, 2019)

Dave Einolf, a Portland consultant who advises businesses about environmental compliance, said the state's fines [for pollutants]— even for repeatedly ignoring the law — are so paltry that it's cheaper for companies to pay them than it is to comply in the first place. It's just a cost of doing business in Oregon.

(<https://projects.oregonlive.com/polluted-by-money/part-3> March 8, 2019)

DEQ has paused “stricter emission standards for new heavy-duty vehicles until 2026 due to a shortage of new trucks with engines that meet the standards” while about ten other states have not.

<https://www.oregon.gov/deq/aq/Documents/HDOFAQ.pdf>

<https://www.oregon.gov/deq/aq/Documents/cfpMHDtruckRulesFAQ.pdf>

Why Did We Include “thriving ecosystems” in the RTHE amendment?

Ecological Footprint: Measuring human impact on ecosystems

Ecosystems provide:

- Water cycling, filtration, cleaning through percolation; cycling between soil, trees and atmosphere

- Air cycling: Photosynthesis of all green biomass is taking in carbon dioxide, releasing pure, clean oxygen
- Ecosystems recycle (natural) waste by decomposition
- Natural ecosystems provide habitat for many species that are disappearing at alarming rates: <https://www.ipbes.net/news/Media-Release-Global-Assessment>

Ecosystems provide natural resources for economy:

- Every dollar derived in our economy originates in taking something from ecosystems, whether that is energy, raw materials, water, or food
- Our economy is a “wholly-owned subsidiary of the Earth” and its natural ecosystems.
- The biocapacity of ecosystems is finite and can not support an infinite growth economy.
- We need to re-orient our economy to value natural resources at their true value and scarcity

Ecological Footprint: How is it possible to be using 1.75 Earths?

- **Ecological Footprint** accounts show that humanity currently demands 75% more from our planet than its ecosystems can regenerate (2022)
- We are living every year beyond what the Earth can regenerate, therefore we are living on depletion.
- The measuring of our national and global human footprint tells us we need to scale back our population AND consumption to live within the Earth’s biocapacity.

Climate change is only a symptom of the underlying problem of **overuse of the planet’s biological resources** (cropland, pastures, fishing grounds, forests, and similar resources which underpin everything from food systems to industry to sequestration of excess greenhouse gases). Other symptoms of overuse include **groundwater depletion, soil erosion, fisheries collapse and deforestation**. Global biocapacity is largely finite and we are placing competing and increasing demands on biological resources — from producing food, fiber, and timber to accommodating houses and roads to absorbing excess CO₂ from burning fossil fuels. These resources can be regenerated, but not as quickly as we are using them.

Today, humans are putting a demand on nature that **exceeds by more than 75% what ecosystems can regenerate**. How do we know? Because each person, company, city, and country has a demand on nature that can be measured, for instance in **biologically productive surfaces** of the Earth required to provide for those demands. This resource supply versus demand balance can be performed with **ecological footprint accounts** which track both the demand on and availability of such surfaces. Essentially, they tell

us how much nature we have and how much we use.

https://www.footprintnetwork.org/2024/09/30/national_security_blind_spot/

Ecological Footprint of all 50 U.S. States:

<https://www.footprintnetwork.org/2015/07/14/states/>

Ecological Footprint of every country on Earth:

https://data.footprintnetwork.org/?_ga=2.63787759.1738864600.1741462315-868823975.1736611388#