

**HEALTH LAW: PEER-REVIEWED ARTICLE**

**Is There a Right to Protection Against Environmental Existential Threats?**

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**Abstract**

Despite broad awareness of impending existential threats to humanity, protections from these threats are not yet widely recognized as human rights. This article distinguishes human rights from legal rights, considers possible domestic and international legal approaches to rights-based protection from environmental existential threats, and offers recommendations about how to motivate such protections.

**A Rights-Based Approach?**

It is well established in the scientific literature that humanity is facing mounting environmental existential threats including, but not limited to, climate change, natural disasters,<sup>1</sup> bioterrorism,<sup>2</sup> and pandemics.<sup>3</sup> This article explores which ethical and legal rights currently exist for present and future generations to use to protect against such threats. This article also considers limitations of rights-based approaches and recommends how to motivate protections against mounting environmental existential threats.

**Human Rights vs Legal Rights**

The term *right* is colloquially and broadly used, so some might believe they have a plethora of “rights” (eg, right to health care, right to free speech, right to a clean environment, and right to education).<sup>4,5</sup> Although there is variation in the literature as to what is considered a right, and there is general consensus in philosophy and law that **human rights** and legal rights exist, some key distinctions will be offered to clarify the nature and scope of human rights and legal rights.

Human rights refer to entitlements that all humans have on the basis of being born human.<sup>6</sup> Derived from various origins, including natural and moral law, human rights apply to all persons regardless of their status, and denial of or encroachment on these rights by society or government is deemed unethical.<sup>6</sup> Although human rights are ethically and morally encouraged, they are not enforceable in and of themselves. In order to ensure protection of human rights, governments must adopt and enforce human rights through the power of the law.<sup>6</sup>

Once a human right is protected by the law, it becomes a legal right with tangible protection and consequences for violation.<sup>6</sup> Within the law, there are various levels of

legal rights, with fundamental rights affording the greatest governmental protection. This article focuses on the development and evolution of a human right to a healthy environment as a fundamental legal right because these 2 types of rights showcase the difference between an ethical duty and a legal obligation and provide a tangible framework for establishing and protecting an ethical and legal right to environmental protection enforceable under the law.

### **Protection From Environmental Existential Threats**

A right to protection from environmental existential threats as a human right is a relatively modern view that gained global traction in 1972 when the United Nations (UN) adopted the Stockholm Declaration on the Human Environment, which asserts that there is a “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>7,8</sup> Building on the momentum of the Stockholm Declaration, countries around the world ratified their national constitutions to provide legal protections for the human right to a healthy environment.<sup>7</sup> By 2022, 156 of the 193 UN member states recognized a legal **right to a healthy environment** in their constitutions, legislation, or treaties.<sup>7,9</sup>

In July 2022, the UN General Assembly specifically declared that the right to “a clean, healthy, and sustainable environment is a human right.”<sup>7</sup> However, this declaration was again made in a nonbinding resolution on the UN member states, meaning that the right to a healthy environment is still not recognized as an official human right by the UN, and the UN member states are not required to follow or act on this declaration.<sup>10</sup>

Although many nations consider the right to a clean environment to be a human right and provide legal protections in attempts to uphold this right,<sup>11</sup> there is not a universally agreed-upon definition of what a human right to a clean environment encompasses. However, there are generally agreed-upon substantive elements that form the basis of this right, including the rights to a safe environment, clean air, healthy and biodiverse ecosystems, safe and sufficient water, healthy and sustainable food, and a nontoxic environment.<sup>7</sup> To protect the environment, people must be able to realize other human rights: access to information, public participation, and access to justice.<sup>7</sup>

As mentioned, the United States is among the minority of UN member nations that fails to recognize a human or legal right to a healthy environment,<sup>7,9</sup> but there is ongoing federal interest in and concern for environmental existential effects. For example, the United States ratified the UN Framework Convention on Climate Change (UNFCCC) in 1992.<sup>12</sup> Additionally, leaders within the US federal government have acknowledged the impending existential threat of climate change, with the White House stating President Obama’s belief “that no challenge poses a greater threat to our children, our planet, and future generations than climate change—and that no other country on Earth is better equipped to lead the world towards a solution.”<sup>13</sup> In April 2021, the US Department of Defense secretary declared climate change an existential threat and called for action to protect the environment.<sup>14</sup> In September 2024, in an address to the UN, the US presidential administration pledged billions of dollars to environmental protections to tackle sea-level rise from melting glaciers.<sup>15</sup> However, orders and policies implemented in early 2025 have begun to walk back some of these environmental protections.<sup>16</sup>

Although there is not a federally recognized human or legal right to a healthy environment within the United States, currently 3 states—Pennsylvania, New York, and Montana—have adopted “Green Amendments” in their state constitution’s bill of rights,

which provide citizens with the inalienable right to clean air, water, and a healthy environment.<sup>17,18</sup> For example, in 1972, Montana amended its state constitution to provide protection for maintaining a clean and healthful environment for all Montanans,<sup>19</sup> and this right has been recognized as a fundamental right by the Montana Supreme Court, affording it the highest legal protection. Of the 3 states that have taken the initiative to establish this constitutional right through Green Amendments, only Montana has successfully utilized its constitutional provision to try to motivate legal protection for the environment. In 2020, 16 Montana youths filed a lawsuit (*Held v Montana*<sup>20</sup>) alleging that the state of Montana's support of the fossil fuel industry was violating the state constitutional provision "to maintain and improve a clean and healthful environment in Montana for present and future generations."<sup>21</sup> The state regulators accused of the constitutional violation defended themselves by asserting that the state's repeal of a statute that the plaintiffs alleged was unconstitutional mooted the plaintiffs' claim,<sup>20</sup> thus making the youths' claim a political grievance and not one that could be addressed by the courts. In the end, the trial court found in favor of the Montana youths, marking the first case in US history to use state constitutional law to uphold the human right to a clean and healthful environment.<sup>22</sup>

*Held v Montana* opens the door to establishing a fundamental right to protection against existential threats, such as environmental harm, for **current and future generations** in the United States; however, there are still several factors contributing to courts' failure to address the environmental existential threat. Importantly, while *Held v Montana* was the first successful climate change lawsuit premised on a constitutional right, it was not the first climate change legal case.<sup>23</sup> Other climate-change related lawsuits have failed because the individual state did not provide adequate protections under the law or because there is a need to establish causation, for example.<sup>24</sup> Another legal factor contributing to the existential threat of environmental harm is that future unborn persons do not have legal rights and, according to some, they also have no moral rights,<sup>25,26</sup> placing future generations at risk for experiencing negative consequences from environmental impact created today through transgenerational effects. The lack of established legal and moral rights thus leaves future generations vulnerable and unprotected from the environmental harm caused by the current generation and prior generations.

### **Motivating Protections**

Despite a majority of UN member states recognizing a right to a healthy environment, the United States has failed to recognize a human right to a healthy environment and has failed to establish federal environmental protections in the US Constitution. As climate change is an existential threat to the continued survival of humanity, there is an ethical imperative to establish a fundamental federal human and legal right to a healthy and clean environment and to enforce regulatory protections of this right. In order to ensure the utmost protection of the environment, a federal Green Amendment is essential. Additionally, individual states are following—and should follow—Montana's lead by declaring a state constitutional right to environmental protection.<sup>27</sup> Individual state action can have 2 effects: first, it provides protection for residents within the state and, second, it might provide support for asserting a federal fundamental right to such protections through an amendment to the US Constitution.

With regard to future generations, while they do not technically have legal rights, an attempt should be made to leverage the rights of currently living individuals to protect future generations. Protecting future generations is imperative, as there is a vast body of

literature showing that exposure to environmental toxins induces epigenetic transgenerational inheritance of disease.<sup>28,29,30</sup> A well-known example is the transgenerational effects of maternal tobacco use on offspring.<sup>31</sup> There is mounting evidence that environmental exposures of pregnant persons have transgenerational effects, and these known effects can cause pregnant persons psychological harm.<sup>32</sup> A person pregnant with a biologically female fetus could use the arguments of psychological distress (such as used in *Held v Montana*) to assert a transgenerational claim for environmental protection because that pregnant person is not only carrying their child, but carrying the genetic material for their grandchildren in the form of the eggs within the female fetus.

## Conclusion

While most of the world has acknowledged that an impending environmental existential threat to humanity exists, protections from this threat are not yet officially recognized as a human right, and the human right to a clean environment has not yet been enshrined as a fundamental legal right for all Americans. Failure to recognize a right to a clean environment as a human or legal right deprives all living persons of adequate protections against impending threats from environmental degradation. This consequence is especially important, given the potential for negative future transgenerational effects. It is time for the United States to join the majority of other UN member nations and fight for a federal Green Amendment to motivate protection against environmental existential threats.

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