

PENNSYLVANIA'S CONSTITUTIONAL ENVIRONMENTAL RIGHTS AMENDMENT

POLICY BRIEF

ENVIRONMENTAL RIGHTS AMENDMENT (ERA)

PA Const. Art. 1, Sec. 27

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.

HISTORY

- Drafted by State Legislator, Franklin I. Kury, the ERA was enacted on the first Earth Day in 1970.
- Over one million PA voters ratified the constitutional amendment by a margin of 4-1 on May 18, 1971.
- ERA is part of Article I Declaration of Rights, putting it on par with other fundamental rights such as our rights to freedom of speech, freedom of assembly, freedom of religion, and right to bear arms.



ERA IN THREE PARTS:



Part 1

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.

The first sentence establishes a constitutional right which protects the people from governmental action that unreasonably causes actual or likely deterioration of these features.

It requires each branch of government to consider in advance of proceeding the environmental effect of any proposed action on the constitutionally protected features. This sentence also places a limitation on the state's power to act contrary to this right; while the subject of this right may be regulated, any laws that unreasonably impair the right are unconstitutional.

ERA IN THREE PARTS:



Part 2

Pennsylvania's public natural resources are the common property of all the people, including generations yet to come.

The second sentence applies to a narrower category of 'public' natural resources but still includes broad aspects of the environment.

It pertains not only to state-owned lands, waterways, and mineral reserves, but also resources that implicate the public interest such as ambient air, surface and ground water, and wild plants and animals. All of these things belong to all Pennsylvanians, including future generations.

ERA IN THREE PARTS:



Part 3

As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

The third sentence imposes two basic duties on all branches and levels of the Commonwealth as the trustee.

First, the Commonwealth has a duty to prohibit the degradation, diminution, and depletion of our public natural resources, whether these harms might result from direct state action or from the actions of private parties. Second, the Commonwealth must act affirmatively via legislative action to protect the environment. These actions must be aimed at conserving and maintaining our public natural resources for all Pennsylvanians, present and future.



WHAT DO THE ERA'S THREE SHORT SENTENCES MEAN IN PRACTICE?

Courts have spent 50 years
analyzing this question.

PAYNE V. KASSAB (1976)

- PA Supreme Court concluded that the ERA requires a balancing of environmental values and other important societal values.
- Three-part "*Payne Test*" used to analyze the balancing resulted in a 40-year period of failed ERA claims.
 - First question essentially became whether the action complied with other environmental laws; if so, no violation of ERA.
 - Also created huge burden on plaintiffs to show environmental harm "clearly outweighed" any benefit.

ROBINSON TWP. V. COMMONWEALTH (2013)

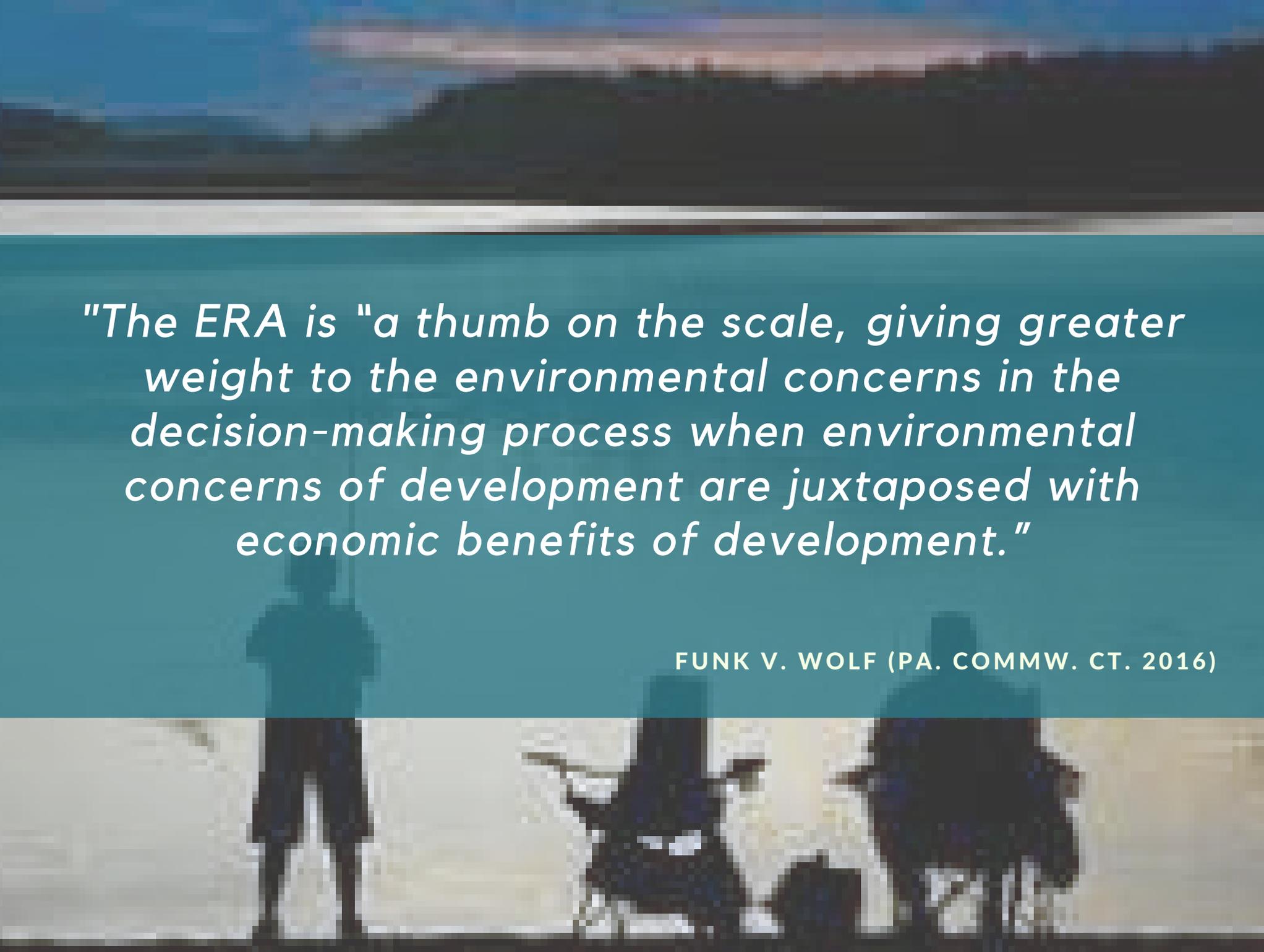
- PA Supreme Court criticized *Payne* for weakening the ERA and provided a better analytical scheme for ERA claims.
- First clause of ERA establishes our rights, but does not impose duty on government to enact specific action, but does impose obligation to not unduly infringe on those rights.
- Second clause dictates that public natural resources is limited but also relatively broad category.
- Third clause establishes a public trust Commonwealth is trustee to maintain public natural resources for the people, including future generations.



"To comply with the [ERA's] constitutional command, the General Assembly must exercise its police powers to foster sustainable development in a manner that respects the reserved rights of the people to a clean, healthy, and esthetically-pleasing environment"

ROBINSON TWP. V. COMMONWEALTH (PA. 2013)





"The ERA is "a thumb on the scale, giving greater weight to the environmental concerns in the decision-making process when environmental concerns of development are juxtaposed with economic benefits of development."

FUNK V. WOLF (PA. COMMW. CT. 2016)

PEDF V. COMMONWEALTH (2017)

- PA Supreme Court finally and decisively rejected the *Payne* test.
- Affirmed *Robinson Twp.*'s statement of basic ERA principals.
- Grounded trustee duties in private trust law principals, including duty of loyalty, duty of impartiality, and duty to manage the corpus of the trust (i.e., the public natural resources) for the benefit of the trust's beneficiaries (i.e., all Pennsylvanians, including future generations).

RECENT ERA CASE TAKEAWAYS*

Even though *Payne* is no more, courts have not favored ERA claims.

- More recent court decisions have tended to focus on "unreasonable" degradation and that the ERA "does not call for a stagnant landscape" or "require a freeze of existing natural resource stock."
- Unfortunately, most courts have found that the appropriate balance between environmental interests and other concerns have been struck and no unreasonable degradation has occurred.

*As of March 2024

PENNFUTURE'S LEGAL WORK ON THE ERA

PennFuture' legal team works to strengthen our environmental rights while protecting and defending attacks on these fundamental constitutional rights through our litigation and regulatory commenting.



Examples of our work include:

- Filing or intervening in lawsuits in order to establish the correct interpretation and application of the ERA and to protect and defend our rights as beneficiaries under the ERA.
- Acting as *amici curiae* ("friends of the court") in several lawsuits in which the ERA was implicated.
- Urging the DEP to create stronger and more protective Environmental Justice policies and regulations based on the ERA.

An aerial photograph of a lush green valley. A river winds through the center of the valley, surrounded by dense forest. The valley floor is a mix of green and brown, suggesting a mix of vegetation and possibly some cleared areas. The surrounding hills are also covered in forest, with some areas appearing more densely wooded than others. The sky is a clear, pale blue.

LEARN MORE:

www.pennfuture.org/ERA