

APPENDIX

Financial Impacts on Weather-Related Events in New Jersey

Hurricanes and Tropical Storms

- Hurricane Irene (2011)
 - \$1 billion in damage. (New Jersey Office of Emergency Management & ISO)
 - **Private insurers paid out approximately \$915 million to cover damage from the storm.**
 - Couple Irene with the “freak October snowstorm” that incurred insured losses of roughly \$150 million and \$21.8 million for a string of severe weather events in March, the three events sapped nearly \$1.1 billion from private insurers, making at the time 2011 the costliest for New Jersey underwriters. By comparison, New Jersey’s insured losses in 2010, which saw a devastating March nor’easter, were \$486.7 million.
- Hurricane Sandy (2012)
 - Overall, \$36 billion in damage. (The Nature Conservancy)
 - Total insured market incurred losses approx. \$4.5 billion
 - Approx. 470,000 total insurance claims in NJ
 - 337,400 Homeowners; 56,301 auto claims
- Tropical Storm Fay (2020)
 - \$350 million in damage to the Northeastern U.S. (National Hurricane Center)
 - NJ damage consisted of coastal and inland freshwater flooding.
- Hurricane Isaias (2020)
 - \$4.8 million in damage across the East Coast.
 - NJ damage included inland flooding in western New Jersey, two tornadoes.
- Hurricane Ida (2021)
 - According to the state, Ida caused about \$2.02 billion in damage. In Somerset County, 13,228 insurance claims were made for \$164.9 million in losses. In Middlesex County, 14,084 claims were filed for \$155.3 million in damages.

Wildfires

- 2022
 - **Total wildfires in NJ: 1,1165 (Triple-I)**
 - **Total acres burned: 15,532 (Triple-I)**
- 2023
 - **Busiest year for NJ wildfires in over 20 years.**
 - Total acres burned between March – September 2023: **18,000**
 - Almost half of those acres were from just two wildfires, The Jimmy’s Waterhole Fire in Manchester Township, and Allen Road Wildfire in Bass River Township.
 - September 2023: Murphy administration announces an additional \$3 million to the New Jersey Forest Fire Service budget. (New Jersey Department of Environmental Protection)
 - Additional funding went towards upgrading equipment; expanding Forest Fire Service’s contracted air support, and funding full-time employees to fill vacancies.
- Pew Charitable Trust Report 2022:
 - Calls for reevaluation of budgets to account for increasing wildfire risk.
 - Investments in controlled/prescribed burns.
 - Stresses need for improved data collection and dissemination of just how much states are spending on wildfire prevention, mitigation, and damages.

NEW JERSEY COASTAL COALITION

Emergency Alert Sign Up



FEMA has awarded the NJCC a grant in the amount of \$200,000 for FY 2023-24 to continue to develop its Weather Emergency App. Goal is to have all municipal members of the Coalition to be able to install and use this interactive tool to communicate with residents during weather emergencies at *no cost to the taxpayer*. Weston Solutions, Inc, is the vendor who helped create the App.

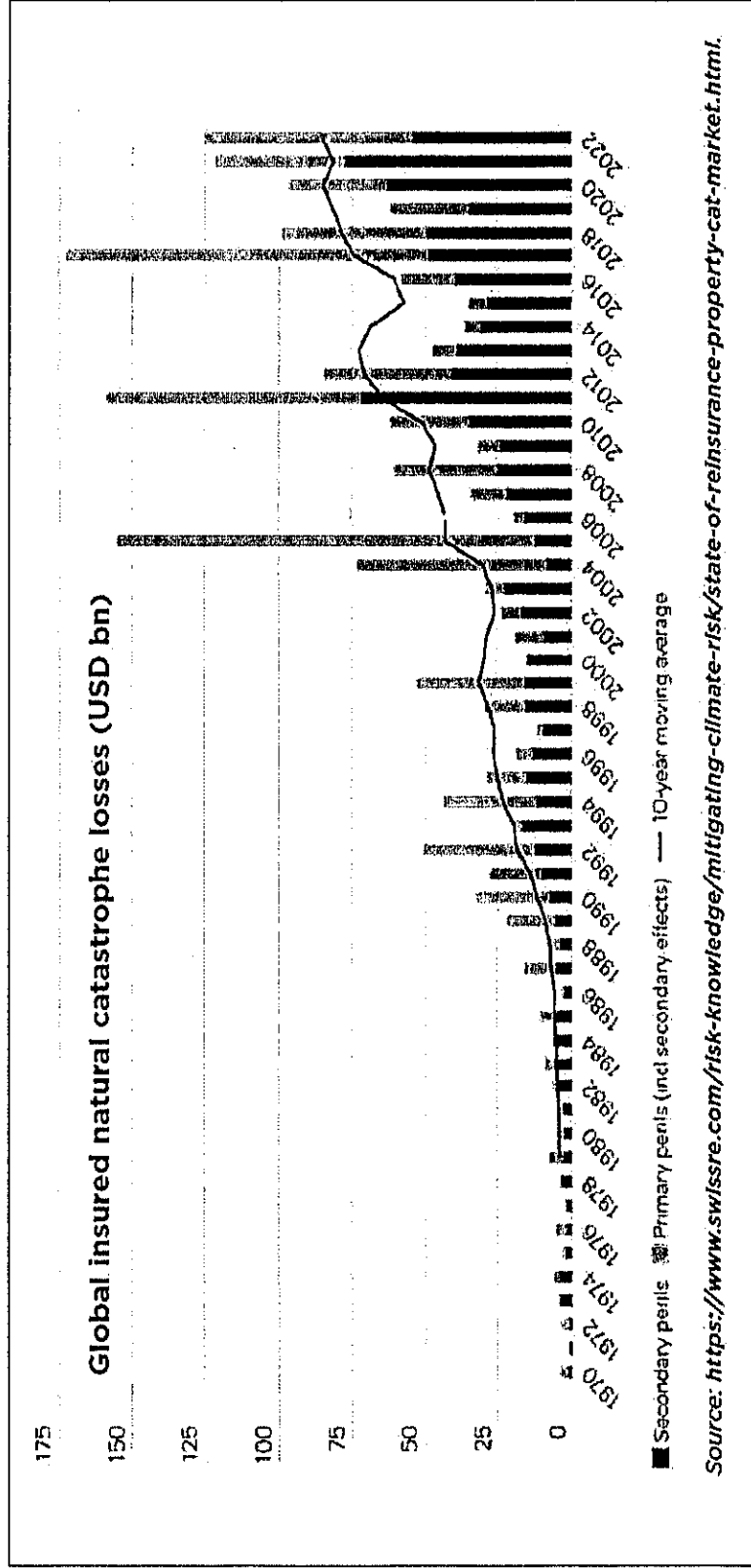
The Changing Climate of Risk

New Jersey Senate Environment & Energy
Committee

March 7, 2024

Dave Snyder, APCIA

Global Catastrophe Loss Trends

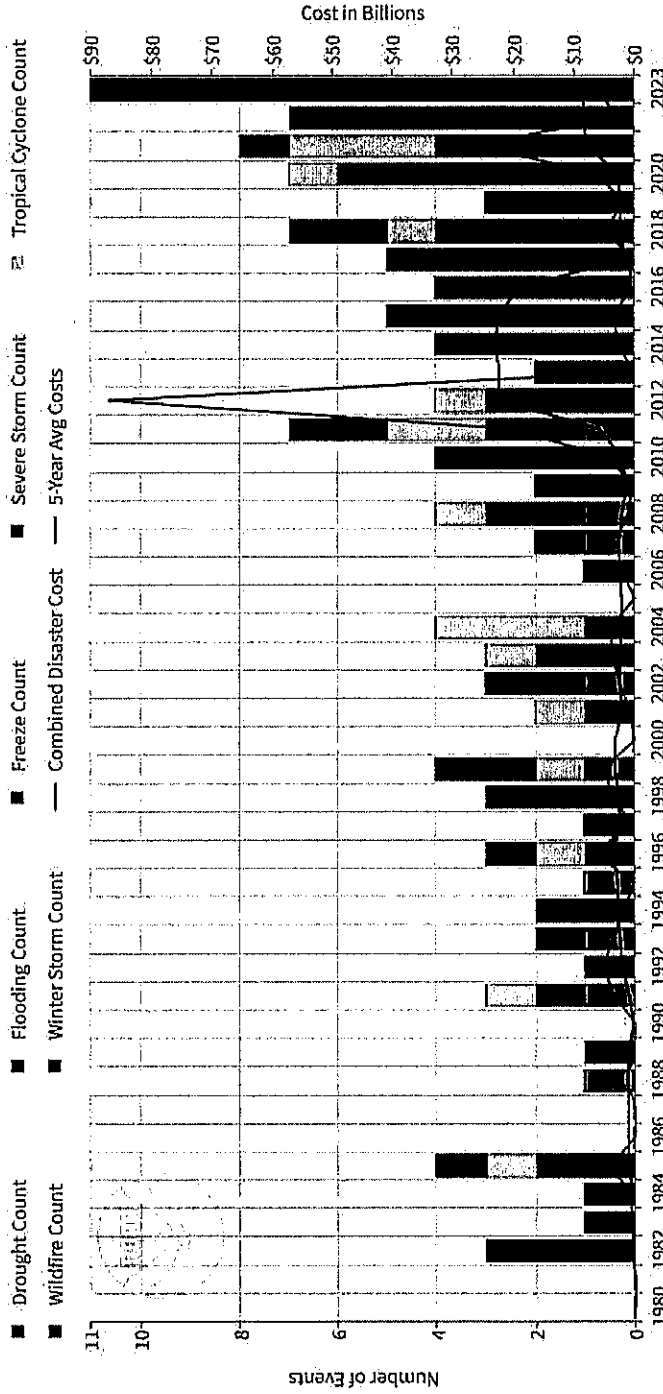


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Northeast (Including NJ) Catastrophe Losses

Northeast Billion-Dollar Disaster Events 1980-2023 (CPI-Adjusted)

CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT



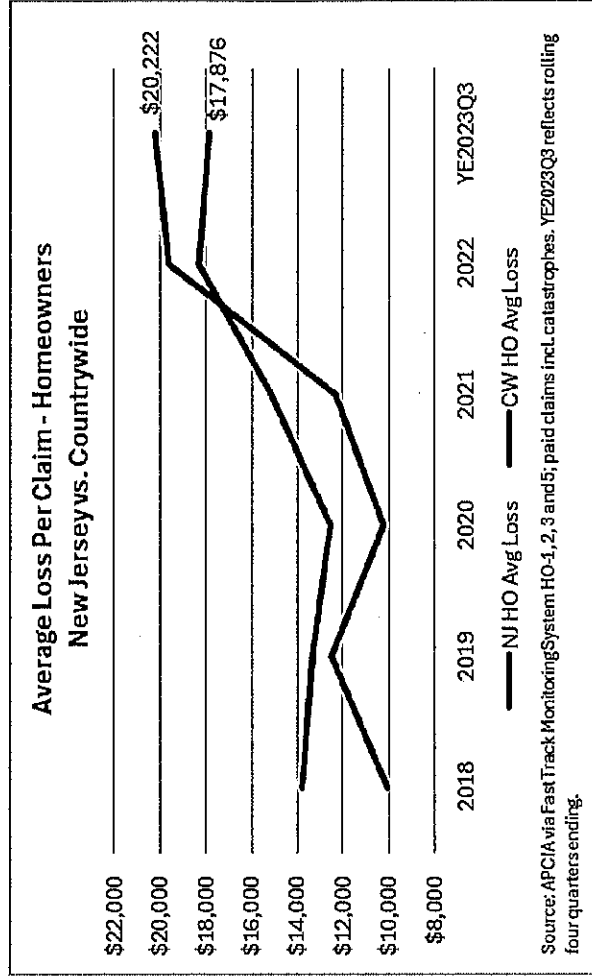
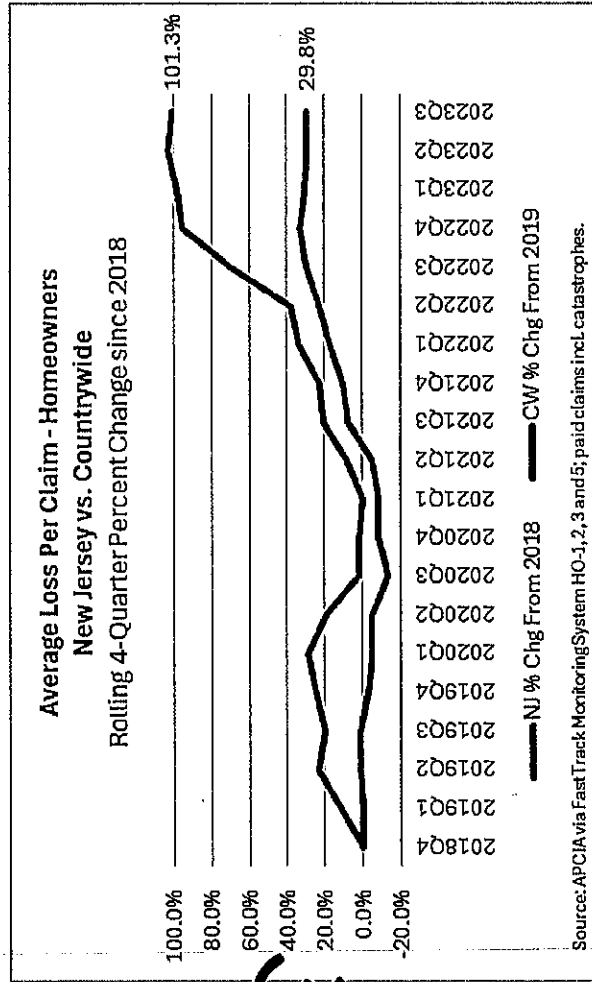
Updated: January 9, 2024

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New Jersey Insurance Trends



Elements Driving the Loss and Related Trends

- Volatile and extreme weather
- Increasing people and resources in harm's way
- Long term increases in asset values and other costs to deliver benefits
- Sudden and severe inflation, especially in connection with the goods and services paid through insurance claims
- Need for public and private risk mitigation to reduce emerging risks— including need for maintenance and including “green” infrastructure
- In some states, counterproductive regulatory reactions

Central and Critical Importance of Mitigation—A Shared Responsibility

- APCI Board guidance emphasizes the importance of mitigation—a shared responsibility
- Beneficial effects
- All hands-on-deck needed—individuals, enterprises, governments and financial institutions including insurers
- Insurers' role—forward looking models, accurate assessment and pricing for risk, providing information to individuals and governments such as the work of the Insurance Institute for Building & Home Safety

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Table 2
Summary of benefit-to-cost ratios of select adaptation investments

Sector	Intervention	Benefit-to-cost ratio	Source
Infrastructure	Retooling utilities and transportation infrastructure	4:1	US National Institute of Building Sciences
	Making new infrastructure more resilient in EMs	4:1	World Bank ¹
	Making new infrastructure resilient	4:1 (2:1 to 10:1)	Global Commission on Adaptation
Real estate	Retooling existing private-sector buildings	4:1	US National Institute of Building Sciences
	New build meeting 2018 F-Codes ²	11:1	US National Institute of Building Sciences
	New build exceeding select 2015 F-Codes ³	4:1	US National Institute of Building Sciences
	New build adopting Florida building codes ^{4, 5}	3:1	Wharton Risk Center ⁶

Note: ¹Lifelines: The Resilient Infrastructure Opportunity. World Bank, 2019 and Building Code Economic Performance under Variable Wind Risk. Risk Management and Decision Processes Center, The Wharton School, University of Pennsylvania, 2018. ² Versus standards from the 1999 Code. Total against riverine floods, hurricane winds and earthquakes; ³ Total against riverine floods, hurricane winds and surge, earth quakes, and wildland-urban interface fire; ^{4, 5} Against wind damage. Source: Swiss Re Institute.

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American Property Casualty Insurance Association






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 Riverine Flood	6:1	5:1	6:1	7:1	8:1	7:1	8:1	7:1	7:1
 Hurricane Surge	not applicable	7:1	not applicable	not applicable	not applicable	not applicable	not applicable	not applicable	not applicable
 Wind	10:1	5:1	6:1	5:1	7:1	6:1	7:1	5:1	5:1
 Earthquake	12:1	4:1	13:1	4:1	3:1	13:1	3:1	3:1	3:1
 Wildland-Urban Interface Fire	not applicable	4:1	2:1	4:1	not applicable	2:1	not applicable	3:1	3:1

TABLE 1. Nationwide average benefit-cost ratio by hazard and mitigation measure. BCRs can vary geographically and can be much higher in some places. Find more details in the report.

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Way Forward--It's All that Easy and It's All that Hard

- Recognize the rising costs and their sources
- Recognize the science that weather related risks are increasing and that the risks are evolving more rapidly than previously understood-- example, the effects on buildings and infrastructure from extreme and volatile temperatures
- Work together on society-wide mitigation
- In the meantime, assure that insurance regulation permits insurers to adapt to the changed and changing circumstances
- “It’s all that easy and it’s all that hard” —easy to say, hard to accomplish, but hearings such as this are a part of the answer



NEW JERSEY
CIVIL JUSTICE
INSTITUTE

MEMORANDUM

TO: Senate Environment and Energy Committee
FROM: Alex Daniel, Counsel
SUBJECT: Senate Concurrent Resolution 43
DATE: March 6, 2024

The New Jersey Civil Justice Institute (“NJCJI”) provides this memorandum to express its concerns to the Senate Environment and Energy Committee (“Committee”) regarding Senate Concurrent Resolution 43 (“SCR43”). By way of background, NJCJI is a nonprofit, nonpartisan coalition of New Jersey’s largest employers, trade associations, and professional organizations. NJCJI advocates for a fair, predictable, and efficient civil justice system in New Jersey, which is an essential ingredient for continued capital investment, innovation, and job creation in the state.

Although seemingly well intentioned, SCR43 threatens to supplant the Legislature and Executive branches as the primary makers of environmental policy in our State, and place private litigants and the judiciary in charge of enforcing the nebulous right to “a clean and healthy environment” and the “preservation of the . . . environment.” In so doing, SCR43 would upend our current regulatory regime, with its built-in protections and careful, deliberative processes, and replace it with a system by which environmental policy is decided by litigants and judges. The careful balancing of environmental, economic, and human concerns that our current regulatory system provides would give way to regulation by litigation, which would necessarily exclude important stakeholders from the rulemaking process and put judges in charge of developing environmental policies. This outcome would not only sew chaos into our State’s well-established and stable regulatory system, but also inject new litigation into our civil justice system. Although judges are and jurors are excellent arbiters of law and fact, respectively, they are not and should not become environmental “super policymakers” with the power to second guess our elected leaders. As such, NJCJI opposes SCR43.

By way of background, our Legislature has developed a thoughtful, deliberative system for regulating environmental concerns in this State. Specifically, the Legislature has empowered the New Jersey Department of Environmental Protection (“DEP”) to “formulate comprehensive policies for the conservation of natural resources in the State [and] the promotion of environmental protection.” In re Adoption of N.J.A.C. 7:15-5.24(b), 420 N.J. Super. 552, 558 (App. Div. 2011); see generally N.J.S.A. 13:1D-1 to -137 (DEP enabling statute). Indeed, in a host of areas, including water and air quality management and the protection of our natural resources, the DEP has the authority to “adopt rules and regulations to effectuate objectives” delineated by the Legislature. See id. at 559. “[T]he promulgation of administrative rules and regulations lies at the very heart of the administrative process,” which our Legislature has developed for the purpose of “permitting ‘expert and flexible control in areas where the diversity of circumstances and situations to be encountered forbids the enactments of legislation anticipating every possible problem which may arise and providing for its solution.’” In re N.J.A.C. 7:1B-1.1 Et Seq., 431 N.J.

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Fairness. Justice. Rule of Law.

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Super. 100, 115 (App. Div. 2013) (quoting Cammarata v. Essex Co. Park Comm., 26 N.J. 404, 410 (1958)). Said differently, “[t]he basic purpose of establishing agencies to consider and promulgate rules is to delegate the primary authority of implementing policy in a specialized area to governmental bodies with the staff, resources and expertise to understand and solve those specialized problems.” Ibid (internal quotation marks and citation omitted).

In addition to vesting experts in executive agencies with the authority to create regulations, our Legislature requires that the DEP adopt those rules in accordance with the Administrative Procedures Act (“APA”), N.J.S.A. 52:14B-1 to -25. In re Amendments and New Regulations at N.J.A.C. 7:27-27.1, 392 N.J. Super. 117, 138 (App. Div. 2007). The formal rulemaking process set forth in the APA, “allows [DEP] to further policy goals of legislation by developing coherent and rational codes of conduct so those concerned may know in advance all the rules of the game, so to speak, and may act with reasonable assurance.” In re 7:1B-1.1 Et Seq., 431 N.J. Super. at 134. Moreover, “[t]he procedural requirements for the passage of rules are related to the underlying need for general fairness and decisional soundness that should surround the ultimate agency determination.” Ibid. (internal quotation marks and citation omitted). The validity of any agency determination requires “compliance with the specific procedures of the APA that control promulgation of rules.” Ibid. Moreover, the procedures required by the APA include strict public notice periods, comment periods, and review periods, and require agencies to give relevant stakeholders an opportunity to weigh in on the appropriateness and impacts of environmental regulations.

To be certain, our courts do have a clear yet narrowly defined role in the rulemaking process. Parties may challenge the validity of regulations before our courts, with the limitation that courts must accord those regulations “a presumption of validity and reasonableness.” Id. at 114. Indeed, “[t]his deference [by our courts] comes from the understanding that a state agency brings experience and specialized knowledge to its task of administering and regulating a legislative enactment within its field of expertise.” Id. at 115. As such, our courts understand that their function is not “to assess the wisdom of [an] agency’s decision, but only its legality.” Ibid. In that vein, a court “may not substitute its judgment for the expertise of an agency ‘so long as that action is statutorily authorized and not otherwise defective because [it is] arbitrary or unreasonable.’” Id. at 116 (quoting Williams v. Dep’t of Human Servs. 116 N.J. 102, 107 (1989)). Said differently, our courts understand that they are not technical experts in the same sense as agency staff and other traditional policymakers, and are therefore limited to determining solely if agencies complied with their enabling statutes, the APA, and constitutional norms “in deciding whether a particular agency action is authorized.” Ibid.

Here, SCR43 threatens to upend this carefully calibrated regulatory process by injecting litigants and courts into the policymaking process and permitting them to second guess the expert determinations of our Legislature and DEP. Specifically, SCR43 provides that:

(a) Every person has a right to a clean and healthy environment, including pure water, clean air, and ecologically healthy habitats, and to the preservation of the natural, scenic, historic, and esthetic qualities of the environment. **The State shall not infringe upon these rights, by action or inaction.**

(b) The State’s public natural resources, among them its waters, air, flora, fauna, climate, and public lands, are the common property of all people, including both present and future generations. The State shall serve as trustee of these resources, and shall conserve and maintain them for the benefit of all people.

(c) This paragraph and the rights stated herein are (1) **self-executing**, and (2) shall be in addition to any rights conferred by the public trust doctrine or common law.”

[See SCR43 (emphasis added).]

Here, SCR43 is problematic for a host of reasons. First, the rights conferred by SCR43 are vague and ill defined. For instance, SCR43 does not define what is meant by “a clean and healthy environment,” or the scope of the State’s responsibility to preserve “the natural, scenic, historic and esthetic qualities of the environment.” Similarly, SCR43 fails to explain to what end the State “shall conserve and maintain” public natural resources “for the benefit of all people,” including “both present and future generations.” Given SCR43’s vagueness and lack of clear definitions, an interminable number of meanings can be read into the proposed amendment’s terms, threatening to inject uncertainty in our civil justice system as parties jockey to parse meaning from its language.

Second, given that SCR43 is “self-executing,” litigants will be free to use SCR43 as a cudgel to reform and reshape our State’s environmental policies to suit their needs, wants, and desires. Indeed, through private litigation, individuals will be able to sue to State any time it allegedly “infringe[s] upon” SCR43’s vaguely defined rights “by action or inaction.” Specifically, the New Jersey Civil Rights Act (“NJ CRA”), N.J.S.A. 10:6-1 to -2, permits individuals to assert a private cause of action against any person or entity “acting under color of law,” for violations of, or interference or attempted interference with, “any substantive rights, privileges or immunities secured by the Constitution or laws of this State.” Perez v. Zagami, LLC, 218 N.J. 202, 207 (2014). Moreover, “[i]n addition to any damages, civil penalty, injunction or other appropriate reliefs in an action . . . the court may award the prevailing party [in a NJCRA action] reasonable attorney’s fees and costs.” Empower Our Neighborhoods v. Guadagno, 453 N.J. Super. 565, 580 (App. Div. 2018). “Plaintiffs can recover counsel fees under our fee-shifting statute even if the lawsuit achieves the desired results because it brought about a voluntary change in the defendant’s conduct.” Ibid.

Here, SCR43 is ripe for abuse as parties may file NJCRA claims on the basis of their rights under the proposed amendment to force the State and its agencies to regulate human activities in the name of a “clean and healthy environment.” Indeed, given the fee-shifting provisions in the NJCRA, litigants and their attorneys have every motivation to bring such claims. For example, SCR43 opens the door to litigants affirmatively challenging new regulations and standards promulgated by DEP on the basis that those rules are not adequately protective of “a clean and healthy environment” or sufficient for “the preservation of the natural, scenic, historic and esthetic qualities of the environment.” In turn and in direct contradiction of our current regulatory system, our courts would then be required “to assess the wisdom of the agency’s decision,” and “substitute its judgment for the expertise of” DEP. In re 7:1B-1.1 Et Seq., 431 N.J. Super. at 114. As a result, SCR43 threatens to turn litigants and courts into the “primary authority [for] implementing policy in a specialized area,” to the detriment of “governmental bodies with the staff, resources and expertise to understand and solve those specialized problems.” Id. at 115. SCR43 will empower litigants and our courts to act as “super policymakers” that sit above the Legislature and State agencies, and have the power to both second guess our elected official’s studied policy determination.

In addition to permitting private parties to directly challenge the merits of DEP regulations, litigants may use SCR43 to force the State to affirmatively regulate human activities that conflict with their amorphous right to a clean environment. Indeed, SCR43 provides that “[t]he State shall not infringe upon” New Jersey residents’ new environmental rights through either “action or inaction.” See SCR43 (a) (emphasis added). As such, even after studied deliberation and policymaking, if the Legislature and DEP elect not to act concerning certain human activities, litigants may assert NJCRA claims against that State on the basis that its inaction harmed litigants’ rights under SCR43. Given the availability of injunctive relief under the NJCRA and the lack of

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guardrails within SCR43, courts would have the authority to order the State to pass regulations, thus supplanting the Legislature and executive agencies' policymaking with its own. Troubling, even in the event that a court orders the Legislature and executive agencies to pass new environmental policies, nothing would prevent another individual from filing yet another NJCRA claim challenging those new rules as violative of their environmental rights. In essence, SCR43 may create a death spiral of litigation where aggrieved litigants continuously challenge every act or failure to act by government. Given the powerful incentives for litigation presented by fee-shifting under the NJCRA, SCR43 may cause an explosion of environmental litigation in our courts, resulting in undue stress on our civil justice system.

The threat posed by SCR43 is not limited to interference with our Legislature and State agencies' environmental policymaking. Any action taken by the State, its agencies, local governments, or any entity operating "under color of law" may be subject to an NJCRA suit pursuant to SCR43 to the extent that such action touches upon some environmental concern. For instance, a current major priority of our State has been encouraging the development of offshore wind power to meet our energy needs in a sustainable and environmentally sound fashion. Despite the importance of these efforts, SCR43 could provide a powerful means for even a single aggrieved litigant to challenge offshore wind facilities so long as that litigant can assert those projects harm their environmental rights. Similarly, our State is on track to adopt electric vehicles as the future of transportation in New Jersey. Yet, under the guise of enforcing their environmental rights under SCR43, individuals could challenge important clean energy and transport projects if they can demonstrate any capacity for interfering with a "clean and healthy environment." For example, lithium mining, processing, and refining activities abroad, which by their nature do produce pollutants and greenhouse gases that have a global impact, could be cited by litigants challenging our State's electric vehicle mandates. Even local government action may be impacted. Despite local governments, planning boards and zoning authorities acting in concert with citizens, businesses, stakeholders, and developers to approve local projects, such as affordable housing, SCR43 offers aggrieved litigants, property owners or objectors a new tool for challenging municipal land use actions. Ultimately, the opportunities for litigation abuse posed by SCR43 cautions against its adoption.

Here, despite its good intentions, SCR43 threatens to upend our State's regulatory system while simultaneously placing undue strain on the civil justice system. Given its vague and ill-defined terms, parties will no doubt jockey to read expansive meaning into its text for the purpose of advancing their specific agenda. Moreover, by filing suits against the State and state actors, litigants can turn SCR43 into a device for promoting regulation via litigation, supplanting our elected officials' and State agencies' wisdom for that of our judiciary. The impact that has on our State will not be limited to our Legislature and agencies' environmental rulemaking—any action by a state actor that touches upon the environment may be subject to a private cause of action seeking redress of SCR43 environmental rights. Given these concerns, NJCJI opposes SCR43.



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From: Raymond Cantor, Deputy Chief Government Affairs Officer

Date: February 5, 2024

Subject: NJBIA Testimony on Senate Concurrent Resolution No. 43

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Christopher Emigholz
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Raymond Cantor
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Government Affairs
Officer

Althea Ford
Vice President

Elissa Frank
Vice President

Kyle Sullender
Director of Economic
Policy Research

Thank you for the opportunity to testify on Senate Concurrent Resolution No. 43, which seeks to amend our state constitution to provide a right of the people to a clean environment. My name is Ray Cantor, and I am the Deputy Chief Government Affairs Officer for the New Jersey Business & Industry Association.

This proposed constitutional amendment seems simple. It provides: “every person has a right to a clean and healthy environment, including pure water, clean air, and ecologically healthy habitats, and to the preservation of the natural, scenic, historic, and esthetic qualities of the environment.”

Mom and apple pie. Who could oppose such a straightforward and simple statement of environmental rights? But we all know that the protection and restoration of our environment is not a simple or straightforward path. We all know that there are complexities, balances, compromises, and tradeoffs. That is why NJBIA opposes this proposal.

There is no doubt that when this country and this state developed, especially during its early industrialization period, that the environment was ignored. Worse, in many areas it was literally trashed. Wetlands were routinely filled in, hazardous chemicals dumped, and forests destroyed. The air was hazardous to breathe.

In response to these and other problems, the modern environmental movement began in the early 1970s with the founding of the Environmental Protection Agency and, in New Jersey, with the creation of the Department of Environmental Protection. Early environmental laws were aspirational, but pragmatic. The Clean Water Act called for the elimination of all water pollution but recognized the limits on technology, so it allowed discharges set at “acceptable” standards, based either on ecological or health standards or, in many cases, technological or cost factors.

Nearly all the environmental laws passed over the last fifty years have made similar tradeoffs because we all recognize and accept that any human activity has impacts on the environment. The question for policymakers is are the benefits of an activity worth the impacts.

That is what the Legislature, and this committee, has been doing for the last fifty years and what the DEP has been doing as well. There has been a recognition that our economy, our need to live, work, and prosper all require environmental tradeoffs. It is a necessity for human flourishing. Humans are part of this equation as well. We don’t live in a green paradise where the birds and other wildlife are not impacted by human activity. They necessarily are. The question is balance and values.

What this simple so called “green” amendment does is take those decisions away from this body. It is crafted on the premise that the Legislature cannot be trusted to protect the public

and make the right decisions. It seeks to go around the Legislature, and the Governor and Executive Branch as well, and allow any person to go to the courts to get the result they want. Passage of this amendment is a deferral of policymaking from the elected branches to the non-elected Judiciary.

But isn't it good for citizens to be able to go to court to preserve the environment? What could go wrong? What is wrong with a constitutional guarantee of a clean environment? Nothing, so long as you don't allow humans in the equation. Let me give a few examples of what to expect if this becomes a constitutional provision:

- Would any warehouse, office, or housing development be able to be built if challenged under this "green amendment"? The uncertainty alone will be enough to deter many developers from even trying to build anything new in New Jersey. Who would provide financing for a project subject to a court ruling on a vague constitutional standard with no underlying statute or regulations?
- What about a road or public infrastructure project or a recycling or food waste project?
- What about wind energy? Would offshore wind meet a "pure water" or "preservation of the natural, scenic, historic, and esthetic qualities of the environment" test once it is enshrined in our constitution?
- What if Trenton wanted to demolish a dilapidated, old factory to make way for a new manufacturing facility that promised to bring hundreds of good paying jobs to the capital city? Would that violate the historic preservation guarantees?
- What if DEP decides not to regulate a contaminant because it falls below the legislatively set threshold for risk or otherwise does not meet statutory or regulatory established criteria for setting a standard? Inaction is clearly subject to court review as well.

I would venture to guess that all these projects, and, in reality, any project or activity would be vulnerable to being rejected by a judge under this constitutional amendment because the simple test being put forth is not balanced, does not take into account other considerations, and, worst of all, is unpredictable.

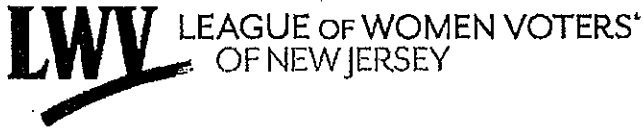
We cannot really answer these questions because the fact of the matter is we really do not know what it means or how it will be implemented. No assurance given by any advocate for this amendment nor any legislator will make any difference to a judge hearing a claim brought forth by any person trying to stop the development or activity de jure.

This constitutional amendment is an abdication of legislative and regulatory authority to the judicial branch. It says that the Legislature no longer wants to be the arbiter of what should or should not be allowed but that we want the courts to decide complex policy issues based on an aspirational constitutional amendment. That is not how our system of government works and it is not how it should work.

We elect both legislators and the Governor to serve the policymaking function. There is debate, there is compromise, there are hard choices. All sides are represented, as this committee today so clearly demonstrates. Representative democracy works. Sometimes it is messy sausage making, sometimes we don't get what we want. But at the end of the day, we make progress. And if we don't like the results, we have elections.

The clean water and clean air acts have dramatically improved our environment and it continues to improve. New Jerseyans drink some of the cleanest and safest water in the world. Our ocean waters have not been this clear and full of marine life in well over 100 years. Our forests are coming back and we have protections in place for wetlands as well as the Highlands and Pinelands. We have preserved over one million acres of land and, thanks to Senator Smith's and this body's work, more will be preserved every year. Our contaminated sites are being cleaned up and restored at a record pace. I would venture to say that the Legislature and the Executive Branch have done a pretty good job of helping to clean up and restore the Garden State.

We do not need to turn these critical decisions over to the judicial branch which lacks the knowledge, time, institutional processes, and accountability to address environmental problems. While I am often here speaking against bills this committee puts up, I would rather make my case here, before this committee, than in a courtroom. I urge this committee to maintain its authority over environmental policy and not to release this concurrent amendment.



Testimony in Support of SCR43

Proposes constitutional amendment to make State trustee of public natural resources and guarantee to the people other environmental rights.

Senate Environment and Energy

March 5, 2024

Good morning Chairman Smith and members of the committee. My name is Joan Divor and I am testifying in support of SCR43 on behalf of the League of Women Voters of New Jersey.

SCR43 is designed to give New Jersey residents a legal basis against further harm to their health and the health of our environment. We are seeing negative impacts in our state, like asthma, water contamination, and increased flooding, particularly in overburdened communities that are closest to pollution sources. These are caused by fossil fuel production, incinerators, truck transportation, and climate change. The residents that are living with these realities, some of whom are here today, speak up against new pollutant sources and new harms to their environment, but that has not been enough. New Jersey needs a green amendment. We need a line in the sand that guarantees the public basic protections to our health and legal recourse to defend those rights.

A bill for a New Jersey Green Amendment was first introduced to the legislature over six years ago. Since then, it has received large public support from constituents across the state and dozens of sponsors in both the senate and assembly. We thank you for holding this hearing today to allow for some public voices to be heard, and we urge you to quickly schedule a committee hearing with a vote on this critical issue that has stalled for far too long.

As this bill directly impacts New Jersey residents, it is time to let them decide. Our state and our democracy is at its strongest when NJ voters are active and empowered. By putting the green amendment on the ballot, voters have the opportunity to codify their right to public health and a clean environment for generations to come.

Just as the League of Women Voters believes that everyone has a fundamental right to vote, we believe that everyone has a fundamental right to clean air, clean water, and a

healthy environment. That is why we support this bill for a Green Amendment. We urge the members of this committee to vote yes in the near future.

Thank you for your time.

Testimony Presented By:

Joan Dvor, League of Women Voters of Camden County Member
Testifying on behalf of League of Women Voters of New Jersey

Hi,

Thank you for the information! Unfortunately I'm unable to attend in person, but Clean Ocean Action would like to be added to the record as in favor of SCR43, but no need to testify. I know that will only add us to the written record and won't be read out, but we would appreciate being added.

Thank you again for all your help!

Best,

Erika Bosack, Esq.

Policy Attorney

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SCR 43 is posted for tomorrow's meeting of the Senate environment committee for discussion only..

As I stated in our phone conversation we are out of State and are unable to attend.

Thank you for taking my phone call and enabling us to be listed as opposed.

League of American Families
John T Tomicki
Executive Director
201-725-2154

Dear OLS - please accept the following testimony on SCR43:

Substantively, I make the following observations:

1) the State of NJ already legally is the trustee for natural resources under the common law Public Trust Doctrine (well established and encoded in NJ law by the Courts), under NJ statutory law (again, upheld by the NJ Courts) and some federal laws, like Superfund, where injuries to natural resources must be compensated for and States serve this Trustee role.

So the SCR43 would do little more than codify current law in this respect, but with some expansion in scope.

More important is the fact that DEP has failed to enforce these rights in virtually all permit programs, remedial action programs, and natural resource management programs with virtually no legislative oversight.

2) The SCR applies only to the State and actions (and inaction) by the State, not the private sector. It's the private sector that is doing the damage.

3) The elevation of natural resources as "common property" and consideration of "future generations" are expansions of current law and good ideas.

4) I don't see anything specific to the climate, the most serious threat. Don't we have a right to an atmosphere of 350 ppm carbon dioxide? That's what the science says is the maximum concentration to support a stable climate. Why isn't that numeric standard written into the concurrent resolution?

5) The "self executing" provision is good:

<https://www.law.cornell.edu/wex/self-executing>

6) I don't understand how creation of this right improves anything. It will take many years for people and environmental groups to bring lawsuits to have these rights defined and enforced.

For example, it took over two hundred years to flesh out the US Constitution's First Amendment rights, and that law is still not settled.

There are no current standards (scientifically and legally) as far as I know that define what these rights are substantively: will the right to clean air and water be limited to the current air and water quality standards? I don't even know what an "ecologically healthy habitat" is; or what the criteria for judging the "esthetic qualities of the environment"

It will take decades of expensive litigation to even begin to flesh out what these rights mean in the real world and establish how they are enforced.

7) The enforcement relies on expensive lawyers and litigation and the courts.

The Courts are the least democratic branch of government.

Money spent on lawyers could be spent on much more effective strategies.

Litigation is a case by case approach and the outcomes are usually crafted by the courts to be very narrow and applicable only to the case and controversy before the court. Fighting Individual site specific battles are a huge waste of money and time and divert from far more effective strategies and tactics. Economists call these "opportunity costs".

8) The Trenton Democrats use largely symbolic gestures like this to cover for their failures and corruption. In the end, they won't even fight politically for it and it is unlikely to pass both houses and be placed on the ballot.

9) Meantime, despite all the rhetoric on "environmental justice", the current legal framework which actually does have teeth and can be enforced (e.g. Title VI of the Civil Rights Act, which was litigated in Camden) is being eviscerated - as is the Public Trust doctrine, which DEP routinely violates and with no oversight or criticism by the Legislature or environmental groups.

Similarly, more pragmatic, realistic, democratic, and effective legislative reforms, like: a) expanding the right to "standing" in administrative challenges to DEP permits, or b) broadening the scope of the Clean Water Enforcement Act to all DEP permits, or c) establishing standards and burdens of proof for natural resource damage recovery, or d) managing environmental and climate impact statements (a State NEPA) or e) using budget and oversight powers to force DEP to resume issuing annual reports on enforcement of environmental laws, or f) establishing the "precautionary principle" to guide DEP decisions under scientific uncertainty, or g) establishing enforceable numeric standards and methods required to enforce current law on "cumulative impacts" and "disproportionate burden", h) or mandating that DEP regulate hundreds of currently unregulated chemicals known to be present in air, water, and drinking water, i) or revoking laws that privatize energy, toxic site cleanup, drinking water, wastewater treatment, and State parks management, or j) or banning logging and improving protections of forests and farms, or k) closing massive loopholes in many current environmental laws based on decades of experience all go completely ignored by Legislators and environmental groups and the media.

10) Politically, the Trenton environmental groups will show up to praise it and then use the press clips as indicators of success and go back to the Foundation community for more funding.

But it will be interesting to see how the business community responds.

My sense is that they will be smart enough to allow the motherhood and apple pie moment to pass with little fanfare - they know it's not a good look to oppose the right to a clean and healthy environment!

But behind the scenes they will lobby legislators to oppose it, if only due to potential litigation risks and the delays and uncertainties this could inject into the DEP permitting process. They will downplay this concern in public testimony, of course.

In conclusion, given all the above, I think the SCR is a misguided strategy and more of a symbolic gesture and Kabuki dog and pony show than a sincere effort. Hate to appear cynical, but I've seen too much of how Trenton operates

Bill Wolfe

this state has not shown that it works for the citizens at all. this legislature has spent like a drunken sailor to spend way way above revenue sothat our children are overspent for several generations. no decent govt does that imo. i do not think this corrupt state can be trusted to be a trusee of our open public lands, which i see destroyed every single day by actoins of our nj dep, our nj div fish and wildlife and their lead use and murder of nj wildlife species, logging of trees to make money based on spurious information of bird species that never lived in nj. the propagands to the citizens is not in sound environmental interests imo. i think we need a better bill to protect citizens of nj from this state govt. vote no until we get it.

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