



Georgia
RTCW
Right to
Clean
Water



Constitutional Right to Clean Water RTCW for Georgia

Webinar by WWALS Watershed Coalition, Inc.

- Introduction & Moderator, John S. Quarterman, Suwannee Riverkeeper
- RTCW in Florida, Chuck O'Neal, President, Speak Up Wekiva, Inc.
- Legal Brief, Chris Bertrand, Satilla Riverkeeper
- Applications of RTCW, Damon Mullis, Ogeechee Riverkeeper
- How To for Georgia, Gordon Rogers, Flint Riverkeeper
- Questions and Answers, assisted by Henry Jackson of Flint Riverkeeper

Moderator, John S. Quarterman, Suwannee Riverkeeper

As a Florida Waterkeeper, jsq moved for Waterkeepers Florida (WKFL) to support RTCW in 2021 and they did.

As a Georgia Waterkeeper he started a statewide committee about RTCW, which compiled the information presented in this webinar.

All of today's presenters are members of that committee. We are speaking for ourselves. This WWALS webinar is the first public presentation of this material.



WWALS Watershed Coalition, Inc.

Founded in June 2012, WWALS Watershed Coalition, Inc. (**WWALS**) is an IRS 501(c)(3) nonprofit educational charity. WWALS advocates for conservation and stewardship of the surface waters and **groundwater** of the Suwannee River Basin and Estuary, in south Georgia and north Florida, among them the Withlacoochee, Willacoochee, Alapaha, Little, Santa Fe, and Suwannee River watersheds, through education, awareness, environmental monitoring, and citizen activities.

Since December 2016, John S. Quarterman is the **Suwannee Riverkeeper®**, which is a staff position and a project of WWALS as the member of Waterkeeper® Alliance for the Suwannee River Basin.

Deep Precedents: RTCW is not a new idea

530: *II.I. By the law of nature these things are common to mankind---the air, running water, the sea, and consequently the shores of the sea.*

--Justinian's Code, Book II, Section 1, Paragraph 1
(the Public Trust Doctrine)

1797: *Firstly, natural property, or that which comes to us from the Creator of the universe--such as the earth, air, water.*

--Thomas Paine, Agrarian Justice

Federal Government Precedents

1948 Federal Water Pollution Control Act

1970 National Environmental Policy Act (NEPA)

1971 Environmental Protection Agency (EPA)

1972 Clean Water Act (CWA)

Yet we still have huge problems about clean water

Need something more basic: a constitutional amendment. Start with states.

State Precedents

1970 Illinois (defective for reasons we will discuss in later slides)

1971 Pennsylvania

1972 Massachusetts (defective)

1972 Montana

1978 Rhode Island (not even in Bill of Rights)

1978 Hawaii (defective; further amendment proposed)

2021 New York:

Article 1, “§19 *Each person shall have a right to clean air and water, and a healthful environment.*”

“Where the constitution is silent, the decisions are mixed.”*

“arguably at least the major such issues should be addressed textually to spare the affected parties and the courts a potentially long period of uncertainty.”* (as happened in Pennsylvania)

Defective amendments are lacking one or more of: healthy environment, trustee, posterity, (anticipatory and preventative) self-executing, inherent and inalienable, **standing, remedies**, local laws, and prohibition of state pre-emption.

* (name redacted), Legislative Attorney, American Law Division, CRS Report for Congress, Order Code RS20084, February 23, 1999, Right to a Clean Environment Provisions in State Constitutions, and Arguments as to A Federal Counterpart,

https://www.everycrsreport.com/files/19990223_RS20084_44ef72947246f9ace4bd5f3e64150cfbc7ce1b.pdf

Without RTCW 2021-06-18: Iowa CCI & FWW v. State of Iowa

Iowa Supreme Court ruled 4:3 that ‘a favorable decision would **not remedy the harm** from pollution in the river and that the case raised **political questions that the legislature, not the courts, should resolve**. As a result, although the Court recognized that the case seeks to address “a real environmental problem,” the lawsuit will not proceed and unabated agricultural water pollution will continue to pollute the Raccoon River.’

‘Suit relied on the Iowa Constitution and the Public Trust Doctrine,’
--[Food & Water Watch](#)

Iowa RTCW proposed Earth Day 2021 [HJR 12](#)

Every person has the right to a clean and healthy environment, including pure water, clean air, ecologically healthy habitats, and the preservation of the natural, scenic, historic, and aesthetic qualities of the environment. The state shall not infringe upon these rights by action or inaction. The state's public natural resources, including its soils, waters, air, flora, fauna, climate, and public lands, are the common property of the people, including both present and future generations. As trustee of these resources, the state shall conserve, maintain, and restore these resources for the health and benefit of all the people. This section and the rights stated herein are self-executing and shall be in addition to any rights conferred by the public trust doctrine or common law.

Pending	Status	Length	Trustee	Self-executing	Future Generations
Florida	Petition start April 2022 for 2024 ballot	longest	implicitly	yes	no
Hawaii	SB 502 passed Senate 2021	short	no	yes	no
Iowa	HJR 12 introduced 2021 more sponsors 2022	medium	?	yes	yes
Kentucky	HB 107 in committee 2021	short	yes	?	no
Maine	LD 489 died 2021, back 2022	short	no	?	yes
New Jersey	ACR 72 & SCR 15 died in committee Jan. 2022	long	yes	yes	yes
New Mexico	HJR 2 died in House, February 2022	long	yes	yes	yes
Oregon	SJR 5 died in committee 2021, but HB 4077 Environmental Justice Council is law effective June 3, 2022	long	yes	yes	yes
S. Carolina	H. 3382 died in committee February 2019	long	yes	yes	yes
Vermont	PR 9 died in committee February 2020	short	implicitly	?	no
Washington	HJR 4209 / SJR 8210 died in committee, Feb. 2022	long	yes	yes	yes
W. Virginia	HJR 25 died in committee, January 2020	short	yes	?	yes

Florida RTCW, Chuck O'Neal

President, Speak Up Wekiva, Inc.

- Chuck headed the successful campaign for RTCW into charter of Orange County, Florida (Orlando).
- A statewide campaign is starting for Florida RTCW, for the November 2024 ballot.
- Jsq will present some slides about Florida RTCW.
- Chuck will be available for Q&A.



Why? Florida Right to Clean Water

Florida has numerous Constitutional provisions about clean water, such as:

Outstanding Florida Water designation: Suwannee River, Ochlockonee River, Apalachicola River, etc.

Supposed to require developers to prove no harm

Actually, that does not happen

Could provide long list of examples....

Florida Images of the Problem



- 'A Government-Sponsored Disaster': Florida Asks For Federal Help With Toxic Algae, Greg Allen, NPR, July 9, 2016, <https://www.npr.org/2016/07/09/485367388/a-government-sponsored-disaster-florida-asks-for-federal-help-with-toxic-algae>
- Brevard ground zero as Florida manatee deaths surge past 400 in first two months, By [Richard Tribou](#), Orlando Sentinel, Mar 09, 2021, <https://www.orlandosentinel.com/news/environment/os-ne-manatee-deats-20210309-fzyo553th5gyxjnrygpu62vg5u-story.html>

Overwhelming Majority in Orange County, FL

On Election Day, a breathtaking **89 percent** of Orange County voters approved the Right to Clean Water Charter Amendment. Orange County is now the largest jurisdiction in the nation to pass this kind of legislation....

This is an indisputable, **bipartisan mandate** from the citizens of Orange County....

It shows that business should not be conducted at the expense of the environment and the public welfare, and that the so-called choice between **a healthy environment and a healthy economy** is a false one.

Joseph Bonasia, Jacksonville.com, Nov. 15, 2020,

<https://www.jacksonville.com/story/opinion/columns/2020/11/15/column-orange-county-voters-approved-right-clean-water-possible-precedent-nation/6186916002/>

Orange County Lawsuit

Charles O'Neal, president of Speak Up Wekiva, **filed** on behalf of the waters of Orange County **a suit against the Secretary of the Florida Department of Environmental Protection and Beachline South Residential**, which is seeking permits for a development in the area.

"If the proposed development is allowed to impact the flow of these waters, their pollution, **the damage to their ecosystems, and their potential destruction cannot be remedied by monetary damages or other relief,**" says the complaint, which is seeking a denial of the permit.

Anagha Srikanth, *The Hill*, May 3, 2021,

<https://thehill.com/changing-america/sustainability/environment/551513-streams-and-lakes-have-rights-and-theyre-suing>

Legal Brief, Chris Bertrand, Satilla Riverkeeper

Chris, who is an attorney, will summarize the five-page legal brief for the Georgia RTCW Committee.

Chris grew up in Alpharetta, Georgia, where he was a Boy Scout. During college, he worked at the Chattahoochee Nature Center as a canoe instructor and an outdoor adventure guide. He went to law school at the University of Georgia to study environmental law because of his interest in protecting clean water and wild places. During law school, he interned with Georgia Sea Grant, the Chattahoochee Riverkeeper, the Southern Environmental Law Center, and EPA Region 4. Chris is currently the Satilla Riverkeeper and Executive Director.



What Does It Mean to Have a Right to Clean Water?

- **Fundamental Right**
- **Gap Filler**
- **Natural Resources Trust Fund**
- **Standing**



What is a Right to Clean Water?

Fundamental Right

Examples of Fundamental Rights:

- Freedom of Speech
- Freedom of Religion
- Due Process
- Right to Marry
- Right to Privacy

High Degree of Protection from the Government



What is a Right to Clean Water?

Fundamental Rights = Strict Scrutiny Standard

Any law that violated a fundamental right **MUST** “narrowly tailored” to achieve a “compelling state interest.”

Law must be “super specific” to achieve something that is “necessary or crucial.”



What is a Right to Clean Water?

Most laws looked at under strict scrutiny are struck down.

Right to Clean Water =
Anti-Backsliding Tool



What is a Right to Clean Water?

Gap Filler

- Courts can fill gaps in legal schemes that would otherwise violate the Right to Clean Water



What is a Right to Clean Water?

Natural Resource Trust Fund

- Money from environmental licenses and fees going to protect the environment.



What is a Right to Clean Water?

Standing

“[Montana’s] constitution does not require that dead fish float on the surface of our state's rivers and streams before its farsighted environmental protections can be invoked.”

–Justice Trieweler, Montana Supreme Court, *MEIC v. Montana DEQ* 1999



Why RTCW? Damon Mullis, Ogeechee Riverkeeper

Damon will present some examples of current waterway problems that are difficult to address under current rules and laws, which would be easier with RTCW.

Damon grew up in rural south Georgia, where he spent his free time outdoors fishing and exploring local rivers and streams. He has bachelor's and master's of science degrees in biology from Georgia Southern University.



Why RTCW? About Damon Mullis

His research has focused on how physical and chemical changes in freshwater ecosystems affect their biological communities.

His projects include studies on the connectivity between rivers and floodplains, the effects of beaver dams on freshwater invertebrate communities, secondary production of macroinvertebrates, nutrient monitoring, and water quality monitoring in rivers and streams. Before pursuing a career in science, Damon managed small businesses for more than 13 years. Since 2018, Damon has been the Ogeechee Riverkeeper.

Why RTCW? In what situations?

In what situations would a RTCW be useful in protecting Georgia's water resources?

The short answer: **All of them**

It would give Georgians a **fundamental** right to clean water with legal implications.

Why RTCW: Milliken Fishkill, Ogeechee River 2011

- Easier to hold bad actors accountable
- Faster legal process
- Better remedies



Why RTCW: PFAS and other “emerging” contaminants

- Give citizens standing to protect themselves from emerging contaminants that we know are toxic, but not yet regulated
- Estrogen and other hormones
- Pharmaceuticals
- Microplastics
- PFAS
- Etc.

A Story Map



Health Issues

What are the Health Effects of PFOA and PFOS?

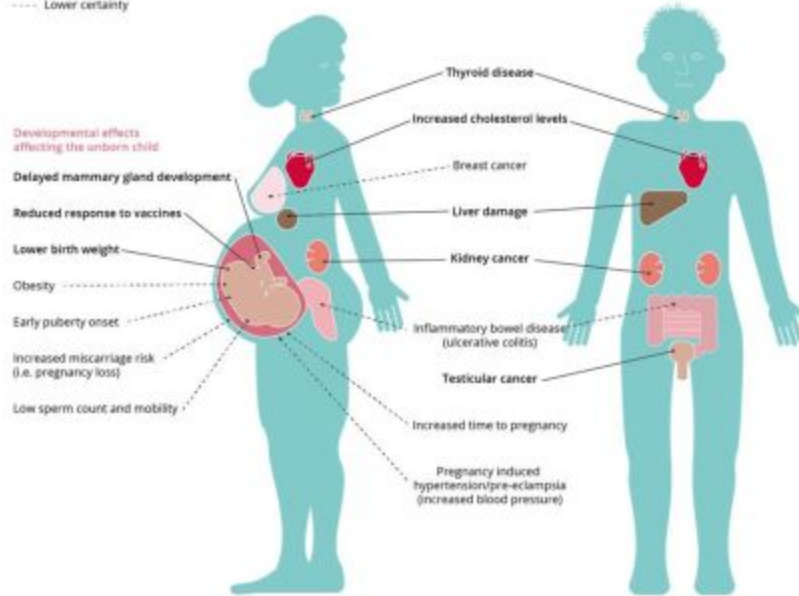
Peer-reviewed studies of laboratory animals and epidemiological studies of human populations indicate that exposure to PFOA and PFOS over certain levels may result in adverse health effects, including developmental effects to fetuses during pregnancy or to breastfed infants, cancer, changes to liver and thyroid function, immune effects, and increases in cholesterol levels.

For more information about the health effects of PFOA and PFOS, please visit the [Center for Disease Control's Agency for the Toxic Substances and Disease Registry PFAS webpage](#).

What is EPA's Health Advisory Level?



— High certainty
- - - Lower certainty



Sources: US National Toxicology Program, (2016) CB Health Project Reports, (2012) WHO IARC, (2017) Barry et al., (2013) Feron et al., (2009) and White et al., (2011).

Why RTCW? Pipelines

Georgia House voted by a huge margin to deny river easements to the Sabal Trail pipeline.

Sabal Trail pipeline sued in county Superior Courts to get those easements anyway.

The state declined to defend.

RTCW would have given standing and a case to opponents.

Why RTCW? Groundwater and lack of CWA protections

Most of the state below the fall line drinks from groundwater.

Drinking water protection from emerging contaminants.

Irrigation, industry, everything depends on groundwater.

Land application problems, so lightly regulated, showing up in surface and groundwater: example of regulatory failure.

Science should lead. RTCW will help.

Georgia How To, Gordon Rogers, Flint Riverkeeper



Gordon has 17 years of riverkeeping experience in Georgia, starting on the Satilla in 2004 and transitioning to the Flint in 2009.

He has 37 years of experience with state-level policy in Georgia, inside government, in the regulated community, and as an advocate.

“The Georgia Way”

- There is no route in Georgia via statewide petition.
- A bill must be introduced to the Georgia General Assembly, have majority leadership, & strong bipartisan support.
- The bill to put the question on the statewide ballot must get a $\frac{2}{3}$ (‘super’) majority in each chamber.
- Past experience with this sort of (constitutional-amendment) work indicates that 5 to 20 years of work is typically required, & that broad support among conservation, property-rights, good-government, & rural & urban groups is a ‘must’
- Resolutions from counties & cities have proven useful in the past

Georgia Rights to Hunt and Fish (2005)

show not only the constitutional pathway but also the 'formula', AND an excellent foundation to build on a 'Montana style' campaign.

RTCW language could actually be sistered on existing RTHF language in the GA constitution.

Text: Georgia Rights to Hunt and Fish (2005)

Article I. **Bill of Rights.** Section 1. **Rights of Persons**

*Paragraph XXVIII. **Fishing and hunting.** The tradition of fishing and hunting and the taking of fish and wildlife shall be preserved for the people and shall be managed by law and regulation for the public good.*

23 States have rights to hunt and fish

California and Rhode Island have rights to fish, but not to hunt.

[https://ballotpedia.org/Right to hunt and fish constitutional amendments](https://ballotpedia.org/Right_to_hunt_and_fish_constitutional_amendments)

- | | | |
|---|--|--|
| <ul style="list-style-type: none">● 1777: Vermont● 1996: Alabama● 1998: Minnesota● 2000: North Dakota● 2000: Virginia● 2003: Wisconsin● 2004: Louisiana● 2004: Montana | <ul style="list-style-type: none">● 2006: Georgia● 2008: Oklahoma● 2010: Arkansas● 2010: S. Carolina● 2010: Tennessee● 2012: Idaho● 2012: Kentucky | <ul style="list-style-type: none">● 2012: Nebraska● 2012: Wyoming● 2014: Mississippi● 2015: Texas● 2016: Indiana● 2016: Kansas● 2018: N. Carolina● 2020: Utah |
|---|--|--|

One of these also has a RTCW

Montana added RTHF as a section on the end of its RTCW.

Article IX, Section 1. Protection and Improvement

(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. [\[1\]](#)

[Etc.]

Montana RTHF

Article IX, Section 7. Preservation of Harvest Heritage

The opportunity to harvest wild fish and wild game animals is a heritage that shall forever be preserved to the individual citizens of the state and does not create a right to trespass on private property or diminution of other private rights.

What: A Georgia RTCW amendment . . .

Could be as simple as:

“Environmental rights. Each person [or each citizen or the people] shall have a right to clean air and water, and a healthful environment.”

Questions?

- What else?
- How can you help?
- How can we help you?

How? Georgia RTCW

Build as big a tent as possible.

Every water trail resolution county or city is a candidate for supporter.

Cultivate allies in hunting, fishing, farming, forestry, realtors

E.g., Foresters worry about development encroachment

Realtors know nature helps sell houses

Scan their public statements and reports.

What about wetlands? CAFOs? Pipelines? Wastewater?

Include local participation in conservation and stewardship

Georgia local charter amendments

Local Georgia city or county charter amendment referendum:

1. Two consecutive votes of the governing council or commission
2. Or petitions of 25% of registered voters

<https://law.justia.com/codes/georgia/2010/title-36/provisions/chapter-35/36-35-3/>

It started like that in Florida: multiple county petitions.

One succeeded in Orange County, home of Orlando.

- Only 20 of Florida's 67 counties are charter counties.
- All 159 of Georgia's counties can amend their charters.

Just need a few significant counties or cities, but which?