

The Honorable Kumar Barve  
Chair, Environment and Transportation Committee  
House of Delegates  
6 Bladen Street, Room 251  
Annapolis, MD 21401

**RE: HB517 – Constitutional Amendment – Environmental Rights – OPPOSED**  
Hearing February 19, 2020

Dear Chairman Barve and Committee Members:

My name is Brian Porto. I am a resident of, and property owner and business owner in, Maryland. My Spouse Catherine and I are raising our three children in the State. I am writing to express my opposition to House Bill 517. The Bill ignores thoughtful consideration of economic, developmental, recreational, historic, architectural and other values, even ecological values, as expressed in 1-302(f) of the Maryland Code. This proposed Amendment takes an extremely myopic view and would set dangerous precedent. The proposed Amendment would most likely be in direct conflict with Article 43 and Article 2 of the Maryland Constitution. There seems to be a significant difference between the way the State has declared environmental rights and remedies under the Maryland Code and potentially deciding to specifically enshrine them in the Maryland Constitution in the manner proposed in this proposed Constitutional Amendment. There is no need for this proposed Constitutional Amendment. It only stands to create confusion and the very real possibility of destabilization of the economy of the State, unnecessarily.

Natural resources include mineral resources on both public and private lands. This includes tillable soil for the growing of agricultural crops and the raising of livestock. It also includes extracted mineral resources such as sand, gravel and crushed stone for the manufacture of concrete and asphalt, as well as building and dimension stone for the construction of walls and walkways, and clay for the manufacture of brick, chimney flues and for use in the arts. The Definition of Natural Resources in the Bill is inaccurate and misleading.

Natural resources on private property are not the common property of “everyone” or even the State. Natural resources of the State are owned and managed by the State and in many cases fall under the requirements of Federal law and regulation. The natural resources of the State are not owned by “everyone”.

The State legislature has already expressed in the Maryland Code that “Each person has a fundamental right to a healthful environment, and each person has a responsibility to contribute to protect, preserve, and enhancement of the environment.” (1-302(d) of the Maryland Code)

As well as that “the protection, preservation and enhancement of the State’s diverse environment is necessary for maintenance of the public health and welfare and the continued viability of the economy of the State and is a matter of the highest public priority.” (1-302(b) of the Maryland Code)

Most importantly is the State’s “determination of an optimum balance between economic development and environmental quality requires the most thoughtful consideration of ecological, economic,

developmental, recreational, historic, architectural, aesthetic, and other values.” (1-302(f) of the Code Maryland)

The Bill ignores thoughtful consideration of economic, developmental, recreational, historic, architectural and other values, even ecological values, as expressed in 1-302(f). This proposed Amendment takes an extremely myopic view and would set dangerous precedent. The proposed Amendment would most likely be in direct conflict with Article 43 of the Maryland Constitution:

“That the Legislature ought to encourage the diffusion of knowledge and virtue, the extension of a judicious system of general education, the promotion of literature, the arts, sciences, agriculture, commerce and manufactures, and the general melioration of the condition of the People. The Legislature may provide that land actively devoted to farm or agricultural use shall be assessed on the basis of such use and shall not be assessed as if sub-divided. (1960, ch. 65, ratified Nov. 8, 1960.) “

Agriculture is the largest contributor of phosphorus and nitrogen into Waters of the State. However, it is a basic activity which provides sustenance and economic benefit to the people of the state and for interstate commerce. Extraction of mineral resources is also a basic activity which provides basic materials for the construction and maintenance of the improvements to the real property of property owners in the State and property owned by the State, and for interstate commerce. Commercial, industrial and forestry activities are also necessary for citizens of the State to pursue life, liberty, or property, and to produce or sell products to the people of the State, the State and for interstate commerce.

Power generation through traditional sources including hydroelectric generation is important to the State and the Nation. Clean energy is also important. However, clean energy also has a negative effect on the fauna of the State through bird death at both wind and solar farms. Just about everything that humans do to survive and function as a society has some negative externality to the environment. This extends all the way down to human bodily functions. Hence it is a thoughtful balance that the State should pursue, not a heavy-handed Constitutional Amendment such as that proposed in Bill 472. Reading through the Bill it appears it would infringe on citizens, corporations and even the State’s right to due process and does not provide for equal protection under the law. This appears to be in direct conflict with Article 2 of the Maryland Constitution:

“The Constitution of the United States, and the Laws made, or which shall be made, in pursuance thereof, and all Treaties made, or which shall be made, under the authority of the United States, are, and shall be the Supreme Law of the State; and the Judges of this State, and all the People of this State, are, and shall be bound thereby; anything in the Constitution or Law of this State to the contrary notwithstanding.”

Because, the proposed Constitutional Amendment contemplated in the Bill appears to be in direct conflict with Section 1 of the 14<sup>th</sup> Amendment to the U.S. Constitution:

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

There is no need for this proposed Constitutional Amendment. It only stands to create confusion and the very real possibility of destabilization of the economy of the State, unnecessarily.

The State already has “Legislative findings, policies relating to protection, preservation, and enhancement of environment” (1-302 of the Maryland Code), “Standing, availability of mandamus or equitable relief” (1-503 of the Maryland Code); “Restrictions relating to causes of action, theories of recovery” (1-504 of the Maryland Code); Purpose of Subtitle to provide remedies” (1-508 of the Maryland Code).

If passed the proposed Constitutional Amendment, portions of the Amendment, or legislation that arises because of its passage, may very likely be challenged and determine, in Federal Court, to be preempted by Federal Law.

There seems to be a significant difference between the way the State has declared environmental rights and remedies under the Maryland Code and potentially deciding to specifically enshrine them in the Maryland Constitution in the manner proposed in this proposed Constitutional Amendment.

For the reasons stated, I oppose the proposed Constitutional Amendment contemplated in House Bill 517.

If you have any questions, I can be reached at 301-343-3419. Thank you for your consideration.

Sincerely,  
Brian Porto  
5900 Landon Lane  
Bethesda, MD 20817