



THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

Testimony in Support of HB517

Testimony by Delegate Vaughn Stewart

February 19, 2020 • Environment and Transportation Committee

What the Bill Does

HB517 will allow Maryland voters to decide whether they want to add a right to a healthy environment to the state constitution. While this concept might seem radical at first blush, it is widely recognized in both the United States and in an overwhelming majority of countries. These provisions have led to remarkable results, including a cleanup of pollution hotspots and the provision of safe drinking water.

Why the Committee Should Vote Favorably

The drafters of Maryland's constitution could not have possibly foreseen how important a healthy environment would prove in the 21st century. In the absence of a constitutional provision, courts are reluctant to reverse executive, legislative, or private-sector decisions in the environmental realm. Where there is a constitutional mandate, judges take a closer look. And in situations where quick action is needed to protect the public's health from environmental hazards, courts provide a valuable fail-safe measure to prevent or mitigate harm.

A right to a healthy environment has been already recognized by several states and nearly 80% countries, and these rights have yielded positive outcomes. First, Boyd (2012) found that countries with constitutional environmental rights provisions have smaller 'ecological footprints' compared to countries without these provisions.¹ Second, after controlling for various factors, Jeffords and Minkler (2016) found that the presence and legal strength of existing constitutional environmental rights provisions are positively associated with environmental outcomes.²

Critics will argue that constitutional environmental rights are 1) too vague to be useful; 2) redundant because of existing laws; 3) likely to cause a flood of litigation; and 4) a threat to democracy because they shift power from elected legislators to judges. However, these alleged downsides have not materialized in other states and countries. The widespread reliance on this right in other places

¹ Boyd, D. R. 2012. *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment*. Vancouver: University of British Columbia Press.

² Jeffords, C., and L. Minkler. 2016. Do Constitutions Matter? The Effects of Constitutional Environmental Rights Provisions on Environmental Outcomes. *Kyklos* 69(2): 294335.



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demonstrates that it is neither too vague or duplicative with existing laws. And there has been no flood of litigation--lawsuits based on this right represent a small fraction of the total number of constitutional cases and enjoy a higher success rate than most other constitutional rights.

Finally, environmental rights have not been used to systemically trump other rights or practical considerations; if anything, judges have erred too much on the side of deference to legislatures. The establishment of a constitutional right does not usurp the legislature's role in crafting environmental legislation. For example, the vast majority of state constitutions include a right to an adequate public education, yet all states continue to pass a myriad of laws affecting education. And of course, Maryland voters will decide whether they want this judicial guardrail. Pennsylvania's experience is instructive. The University of Maryland Environmental Law Clinic recently reviewed cases that attempted to rely on Pennsylvania's amendment, and found that courts were invoking the right only in the most extreme cases. In *Robinson Township v. Commonwealth*,³ a Pennsylvania court blocked a law that would've dramatically accelerated fracking in the state. In contrast, in *Greaton Properties*, a Pennsylvania court dismissed the plaintiffs' claim that new student apartments violated their environmental rights.

Clean air and water are fundamental rights, and should be recognized as such in Maryland's state constitution. I urge a favorable report.

³ 637 Pa. 239 (Pa. 2016).

VAUGHN STEWART
Legislative District 19
Montgomery County

Environment and Transportation
Committee

Subcommittees

Environment
Land Use and Ethics



The Maryland House of Delegates
6 Bladen Street, Room 220
Annapolis, Maryland 21401
410-841-3528 • 301-858-3528
800-492-7122 *Ext.* 3528
Vaughn.Stewart@house.state.md.us

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