



501 6<sup>th</sup> Street  
Annapolis, MD, 21403  
P: 410-216-9441  
[www.chesapeakelegal.org](http://www.chesapeakelegal.org)  
[info@chesapeakelegal.org](mailto:info@chesapeakelegal.org)

**Testimony in Support of House Bill 517 – Constitutional Amendment – Environmental Rights  
(‘Maryland Constitutional Amendment for Environmental Health & Justice’)**

The Honorable Kumar P. Barve, Chair  
House Environment and Transportation Committee  
Maryland General Assembly  
Room 251, House Office Building  
Annapolis, MD 21401

February 19, 2020

Dear Chairman Barve and Members of the Committee:

Thank you for this opportunity to submit testimony **in support** of House Bill 517 on behalf of the Chesapeake Legal Alliance (CLA). The goal of CLA is to effect systemic and permanent improvement in the health of waterways and communities throughout the Chesapeake Bay region. CLA provides law and policy analysis, and coordinates a network of volunteer attorneys who assist communities in their legal efforts to improve water quality and restore the Chesapeake Bay. After reviewing House Bill 517, it is clear that this proposed constitutional amendment would greatly benefit our clients, partners, and communities throughout Maryland, and represents good public policy and a helpful tool as Maryland seeks to finally restore the Chesapeake Bay.

This constitutional amendment would allow the people of Maryland to enshrine in our state constitution a fundamental right to a clean and healthy environment. Decades of public opinion polling has consistently shown overwhelming bipartisan support for clean air and water laws in the United States, and a recent survey indicates that a significant majority of Maryland residents feel strongly enough about environmental protection to establish a new constitutional protection.

This committee may be wondering why there is so much interest in establishing a constitutional amendment for Environmental Health and Justice right now. In part, this amendment is a direct response to the substantial diminishment of government involvement in ensuring that our most important public health and environmental safeguards are given effect. As members of this committee are well aware, we are experiencing a substantial weakening of our environmental laws in the United States at the present moment. Even before this dramatic policy shift began, government resources dedicated to implementing and enforcing our environmental laws had been in a long state of decline at the state level around the country, including in Maryland.



This proposed amendment is directed at this particular problem and, unlike most proposed legislation before your committee, does not establish a cause of action against private entities or create any new legal responsibilities for the private sector. The amendment is not designed to supplant our current framework of laws and regulations, and the amendment would never become the primary means of challenging illegal pollution or other environmental concerns. In fact, out of the 147 cases brought in other states over the last 40 years under similar constitutional provisions, no lawsuits were brought solely on a constitutional basis. Moreover, courts generally require exhaustion of other remedies before deciding a case on constitutional merits and will avoid addressing constitutional claims if other questions are presented. This amendment would only create a backstop and guardrails, allowing the public to step in if the government decides to step back from its duties to faithfully execute the law.

Put simply, the constitutional amendment for Environmental Health and Justice would make sure that what is happening at the federal level now can never happen in Maryland. This amendment would accomplish that in two ways: by requiring the State to serve as a trustee for the state's natural resources and by providing Marylanders with greater legal rights and access to judicial redress when the state is failing to uphold its constitutional duties.

When Congress created many of our foundational environmental laws a half century ago, it understood that, in order for these fundamentally new statutory schemes to succeed in solving the enormous challenges ahead, the laws would need both well-resourced public servants and an engaged public. One without the other would not suffice. Thus, Congress provided wholly new "citizen enforcement" rights in many of these laws and established a number of other important provisions designed to cement this critical partnership between agencies and concerned communities.

Unfortunately, what has happened over the course of the last five decades is a steady erosion in the ability of the public to participate in the implementation and enforcement of these laws. And this is particularly true in this state, where Marylanders face a lack of access to the environmental information they need to become appropriately engaged and equipped; a lack of access to agency decision-making processes; and a lack of access to the courts.

It is well known among many environmental law practitioners in Maryland that state law provides significant obstacles to individuals concerned about the impact of pollution on their communities or health. In Maryland, the legal doctrines of both standing and intervention are much stricter than at the federal level and more hostile to the public seeking redress against unlawful pollution. Combined with far less transparency of government data in Maryland than in other states or at the federal level, it has become nearly impossible for Marylanders to fulfill their role as a core partner with our front line government agencies in our joint efforts to protect public health and the environment.

This proposed amendment will send a powerful message to the public that they do have the right to ensure that our environmental and public health safeguards are given effect. The amendment would provide new constitutionally guaranteed rights to the public to hold agencies accountable to the job they are legally obligated to do. And with a rapid erosion in the ability of government agencies to enforce the law, it has become more important than ever before to ensure the public is given greater rights and the ability to exercise these rights.



This proposed amendment embodies the public's desire to fortify and commit our government to implement and enforce the safeguards entrusted to them by our environmental laws. The public deserves to have this right and we urge the committee to pass House Bill 517 and allow Marylanders the opportunity to vote for a constitutional amendment to protect this right.

Sincerely,

A handwritten signature in cursive script, which appears to read "Evan M. Isaacson".

Evan Isaacson  
Senior Staff Attorney  
Chesapeake Legal Alliance