

Rabbi Nina Beth Cardin
Baltimore County
District 11

January 17, 2021

HB82 Favorable

Dear Chairman Barve, Vice-Chair Stein, Honorable Members of the Environment and Transportation Committee,

The earth needs us. It is suffering by our actions, and without urgent responses, we will suffer at hers.

We need to be bold. Despite the best efforts and intentions of this august committee and the Maryland General Assembly as a whole, there is no way that granular legislation – essential as it is – can respond quickly enough, broadly enough and anticipate well enough to respond to the diverse assaults on the earth. We need a constitutional amendment that can lay down the expectation for actions that assure that we will tend well to this earth so that no one will continue to be harmed by the degradations we cause.

The Environmental Rights amendment says that everyone has a fundamental and inalienable right to a healthful environment – words taken directly from the Maryland Environmental Policy Act of 1973.

Its benefits

- The amendment itself is not granular. It doesn't prescribe particulars. That is up to this committee and the General Assembly. Rather it ensures that government always consider the protection of the environmental as a "matter of the highest public priority" (in the words of MEPA) in all its deliberations and planning.
- The amendment will prevent the future weakening of hard fought environmental laws and standards and enhance compliance and implementation.
- It will place our right to a healthful environment on par with all our other civil rights.
- It will promote Environmental Justice – asserting that no person has more of a right to a healthy environment than any other person; and that no neighborhood has a greater right to a healthy environment than any other neighborhood.

- It will expand standing for those who can claim that environmental harms impact them. In short, it makes clear once and for all that it is the government's uncontested duty and high priority to protect the environmental rights of all people.

No floodgates of litigation

For those who fear that such an amendment will open the floodgates of litigation, students at the University of Maryland Environmental Law Clinic studied four states that have had an environmental rights provision in their constitutions for over 40 years and found no evidence of a rash of lawsuits. Indeed, they found that the environmental rights provision was never the sole cause of action in a suit, meaning that it is highly likely that those suits would have been brought even without such a provision.

This will not stymie development

Nor will this amendment stymie development. We can learn this from the Pennsylvania Supreme Court ruling in *Robinson Twp. v. Commonwealth* (623 PA 564, 83 A3d 901, 954 (2013)) that found in favor of seven municipalities - the plaintiffs – who used the Environmental Rights amendment to seek the ability to ban fracking in their jurisdictions. In that same opinion, the Court explained that while they found for the plaintiffs in this case, the amendment was not reckless in preventing all progress, that it was not intended to “deprive persons of the use of their property or to derail development leading to an increase in the general welfare, convenience and prosperity of the people.”

No right is absolute

Nor will this amendment unduly constrain the legislature, for no right is absolute. The Montana Supreme Court (*Montana Env'tl. Info. Ctr v Dept of Env Quality* 1999 MT 248 (1999)) affirmed this in its decision when it used that state's amendment to find in favor of the plaintiff against the state, and yet wrote, as explained by *For the Generations*: “When a fundamental right articulated in the Declaration of Rights section is at issue, court review requires strict scrutiny, meaning that any demonstrated infringement can only withstand constitutional challenge if [here they quote the Court] ‘the State establishes a compelling interest and that its action is closely tailored to effectuate that interest and is the least onerous path that can be taken to achieve the State's objective.’” The court realizes that life requires affecting and sometimes disturbing the environment. The question is, how much, for how long, at what impact and are there other ways that the same or comparable result can be achieved.

At root, the Environmental Rights amendment will assure that environmental health, and the health of all that depends upon it – our bodies, our society and our economy – will be “a matter of the highest priority” in all that we do.

I urge you to pass HB82 and put this matter before the populace of Maryland to decide.

Sincerely,

Rabbi Nina Beth Cardin