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January 22, 2021

Honorable William C. Smith, Jr., Chair
Senate Judicial Proceedings Committee
2 East, Miller Senate Office Building
Annapolis, MD 21401

Re: Opposition to SB151 – Constitutional Amendment – Environmental Rights

Dear Chairman Smith:

On behalf of the Maryland Builders and NAIOP, I write in opposition to Senate Bill 151.

1. This proposed constitutional amendment goes far beyond any provision in federal law or, as far as we are aware, any state law by specifically authorizing private litigation against the state, counties, municipalities or any "public party" without any limitations or conditions. For example, federal environmental laws generally only allow private citizens to sue when, after 60 days notice, an environmental agency fails to act to diligently pursue a specific violation of law. The proposed amendment would allow suit even if the agency had acted and resolved the issue. The proposed amendment also eliminates any requirement that the plaintiff have standing, even under the loose federal standards, to bring a suit. As another example, the Pennsylvania's Environmental Rights Amendment does not contain any language authorizing broad private litigation rights.

2. The Amendment purports to allow suit to protect "clean" air, water, and land. That definition is necessarily vague compared to the volumes of Maryland and federal environmental laws. Maryland's environmental laws, like all state and federal environmental statutes and regulations, have detailed parameters of what is permissible, or "clean" and what is not. Often those parameters are based upon what is technically possible. For example, a water municipal sewage plant must remove almost all nutrients from a discharge, but technology cannot remove 100% of the nutrients. The proposed amendment would permit anyone in the state to sue the plant for not achieving a cleanliness standard that is not achievable. Simply put, the term "clean" is so ambiguous that it invites endless litigation.

3. The Amendment goes beyond environmental rights to include "scenic and historic" values. This would appear to allow private parties to do an end run around zoning by

local authorities. For example a municipality could zone a location as acceptable for manufacturing but a neighbor could sue because the neighbor alleged it violated the neighbor's claim to "the right to …the preservation, protection, and enhancement of … scenic... values…"

4. The litigation allowed by this proposed amendment would not be limited to actions that impact the environment. Alleged "inaction" could also be litigated. If an agency or municipality failed to do everything that any citizen felt should be done, the citizen could sue. For example, any person could sue a municipality which continues to allow gasoline powered cars to be sold if the person alleged that the municipality by the "inaction" of not banning the vehicles was "infringing" on the person's right to "a stable climate."

We all support clean air, water, and a healthful environment. That is the reason why the General Assembly and Congress has adopted volumes of environmental laws and the EPA, MDE and DNR have adopted even more volumes of regulations. But those carefully crafted provisions should not be overwritten by a blanket and vague term and then subject to never ending litigation.

Sincerely,

Michael C. Powell

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MCP