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Date: March 8, 2022  
To: Members of the Senate Judicial Proceedings & Education, Health & Environmental Affairs Committees  
From: Holly Porter, Executive Director  
Re: SB 783 – Constitutional Amendment – Environmental Rights - **OPPOSE**

Delmarva Chicken Association (DCA) the 1,600-member trade association representing the meat-chicken growers, processing companies and allied business members on the Eastern Shore of Maryland, the Eastern Shore of Virginia, and Delaware opposes SB 783 and urges an unfavorable committee report.

SB 783 has the appearance of being a bill that any resident of Maryland would want – “the fundamental and inalienable right to a healthful and sustainable environment.” And no one understands that want more than farmers who are often coined as the “first environmentalists.” Farmers make their living off the land and water that quite often they also live on, and clean water and air are important to them as well.

#### **No Say in Healthy Environment – Not True**

Proponents of the bill have stated that without this constitutional amendment, the laws of Maryland do not protect our rights as citizens to a clean air, clean water and a healthy environment.<sup>1</sup> And that’s simply not true.

Farmers are already under a lot of laws, regulations and permits to operate their small business, especially chicken growers. To build a chicken farm, the farmer must first follow the local planning and zoning guidelines which have been established by the county through a very public Comprehensive Planning Process.

Then the farmer will be required to obtain a general discharge permit for concentrated animal feeding operations (CAFO). This permit and the Comprehensive Nutrient Management Plan that is required is written in a way that there is **no discharge** from a chicken farm. Not only has the general permit had a public comment period, but a member of the public with standing may also comment on the individual farmers permit and Comprehensive Nutrient Management Plan. These permits already take months to obtain, with a public participation process that has caused farmers even years in delay from receiving the permit. Usually those who participate in the public process provide very little substantive input to the permit that is being issued, but it does create stress to the farmer, a small business owner.

Then the farmer will be required to obtain a stormwater permit – again another regulation that was promulgated and allowed for public comments. These permits are an additional measure to assure that no nutrients leave the farm.

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<sup>1</sup> Maryland Campaign for Environmental Human Rights – [www.mdehr.org](http://www.mdehr.org)



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### **Will Not Increase Lawsuits – Not True**

Proponents of this bill have also stated that the constitutional amendment will not increase lawsuits, however they believe it is a “legal tool for both the people and government to use.”<sup>2</sup>

The chicken community has already been threatened by a lawsuit just 10 years ago with the *Waterkeeper Alliance, Inc. vs. Alan Hudson*, an initiative led by the Assateague Coastal Trust. This mistaken identity of a pile of litter resulted in three years of litigation, millions of dollars in legal fees and mental stress on a young farm family.

In 2019, a number of environmental groups, including Chesapeake Legal Alliance, Center for Progressive Reform, Environmental Action Center, Environmental Integrity Project and more received \$3.5 million over 42 months from the Town Creek Foundation for the purposes “to launch a 5-year legal enforcement campaign to hold government and industry accountable for compliance with the Clean Water Act and the Chesapeake Bay TMDL.”<sup>3</sup> In addition, the Assateague Coastal Trust (ACT) received another \$2.5 million over four years with the deliverables of “communities on the Eastern Shore will have benefited from a healthier environment and an enhanced ability to exercise their legal rights.”<sup>4</sup> Currently ACT is working with the Chesapeake Legal Alliance to bring legal action on the Maryland Department of the Environment claiming that MDE’s CAFO permit needed to regulate air emissions.

In a July 22, 2021 blog posted on the Maryland Campaign for Environmental Human Rights website titled *CAFOs, Environmental and Public Health, and the EHR Amendment*, the author states “If the EHRA was in place, residents who live in the same airshed and watershed with the CAFOs and whose land, water and health were being harmed by these CAFOs could invoke the violation of their rights to a healthful environment and hold the Maryland Department of the Environment (MDE) accountable for not regulating CAFOs emissions of air pollutants that is harming their health. An EHRA fills the **legal gaps**, allowing Marylanders to seek redress on a violation of the right to a healthful environment even if there is not a granular specific law that the pollutant is violating.”<sup>5</sup>

Even if a judge was to not allow standing for a frivolous case, the farmer would still be required to hire an attorney to fight the standing. Chicken farmers do not have foundations granting them funds for legal fees. Chicken farmers and agriculture relies on science-based, data driven laws and regulations to guide them, not emotions and assumptions.

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<sup>2</sup> Maryland Campaign for Environmental Human Rights – [www.mdehr.org](http://www.mdehr.org)

<sup>3</sup> <https://towncreekfdn.org/recent-grants/2019-grants/>

<sup>4</sup> <https://towncreekfdn.org/recent-grants/2019-grants/>

<sup>5</sup> <https://mdehr.org/cafos-environmental-and-public-health-and-the-ehr-amendment/>



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### **Bill Only Targets Polluters – Not True**

Proponents would say that the only people that should be worried about this bill are polluters. However this bill is extremely broad in scope with no definitions of what is a healthful or sustainable environment.

In a November 2021 *Maryland Matters* article, Monica Brooks, the founder of Concerned Citizens Against Industrial CAFOs, discussed how this amendment would have helped in defeating a poultry farm from being built. The farm had not even broken ground, so there was no way it was causing harm to the environment. Yet the article says “the amendment could have served as an extra layer of protection, by sending a message to polluters that a clean environment is a priority for the state, Brooks said.”<sup>6</sup> This is building an assumption that a chicken farm is a polluter. With no science or factual information.

If SB 783 were to pass, then the chicken community would anticipate even more frivolous public participation in permitting process, perhaps even from those that have very little standing or even living in the area where the chicken farms are located. We would also anticipate nuisance lawsuits that could jeopardize the livelihood of a grower and his/her family. And there would likely be additional lawsuits on state and counties that would slow down the process of a small farmer starting a business.

To be clear, DCA also believes that every citizen deserves a clean environment – our chicken community are citizens as well. But we do not believe this bill would protect that right.

We urge an **unfavorable** vote on SB 783.

Should you have any additional questions, please feel free to contact me at [porter@dcachicken.com](mailto:porter@dcachicken.com) or 302-222-4069 or Nick Manis, Manis Canning & Associates, 410-263-7882.

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<sup>6</sup> [www.marylandmatters.org/2021/11/29/supporters-launch-a-renewed-push-for-environmental-human-rights-amendment/](https://www.marylandmatters.org/2021/11/29/supporters-launch-a-renewed-push-for-environmental-human-rights-amendment/)