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Legislative District 47
Prince George's County

PRESIDENT PRO TEMPORE

Executive Nominations Committee

Education, Energy and the
Environment Committee



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

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February 27, 2024

Dear Colleagues,

I am pleased to **present Senate Bill 0653 - Standing – Environmental and Natural Resources Protection Proceedings (Clean Water Justice Act of 2024)**, which amends subtitle 9. of the Clean Water Justice act and asserts the right of Marylanders to defend our waterways against illegal pollution by codifying citizen suits into state law. This legislation is crucial following the United States Supreme Court decision in *Sackett*, as it seeks to ensure that citizens can fight against illegal pollution and help contribute to the protection of Maryland's prominent waterways and other natural resources for generations to come.

The Supreme Court decision in *Sackett v. EPA* had two notable consequences. First, it significantly narrowed the definition of waters of the United States, and second, it revoked the right of individual citizens to bring lawsuits against polluters with respect to certain wetlands not considered 'indistinguishable' to a navigable waterway. Under state law, Maryland maintains a broad definition of the waters of the state, so it is still illegal to pollute these waterways. However, unless the Clean Water Justice Act gets passed, Marylanders will no longer be able to defend our waterways in court.

Maryland possesses one of the largest water systems in the entire United States, with 2,699 square miles of water area, constituting approximately 21.8% of the state. This percentage of water to land is the fourth largest among all states. While our state has taken steps to define "waters of the state" for protection, Marylanders cannot currently exercise their rightful claim over these waters.

This bill is intended to ensure that Marylanders maintain the same rights to protect our waterways that we have held for over half a century under the 1972 Federal Clean Water Justice Act. By granting ordinary citizens the ability to combat bad actors who seek to profit from pollution, the bill aims to foster both an active and capable citizenry and a sustainable future.

Although the government is well-positioned to protect much of our water resources, there are inevitable gaps in its ability to effectively maneuver and utilize resources to protect the vast swathes of water in the state. This bill addresses this inevitability by providing citizens with the right to protect the waterways they collectively own.

The *Sackett* decision has narrowed citizens' right to defend our property and our state from

ill-intended actors looking to profit from pollution at the expense of Marylanders. This bill codifies our citizens' right to defend themselves and our state from these encroachments without relying solely on the government to intervene.

During our collaborative efforts with MDE and DNR, we've developed sponsor amendments aimed at refining the bill's focus exclusively to water pollution permitting programs and wetlands programs, specifically those highlighted in the Sackett case. These amendments meticulously narrow the scope to incorporate only a handful of subtitles addressing water pollution and wetlands overseen by MDE. Furthermore, we've ensured clarity in MDE's role by explicitly outlining its responsibilities in reviewing and approving settlements reached between the public and the violator. To enhance the precision of the original bill, we've incorporated clarifying and corrective amendments, reinforcing our commitment to addressing the pertinent issues at hand.

The constitution of Maryland established that all government rights originate from the people. Therefore, it only makes sense that the people have the right to protect our waterways alongside the government.

Thank you for your attention to this critical matter. I urge the committee to give a favorable report for **Senate Bill 0653 Standing – Environmental and Natural Resources Protection Proceedings (Clean Water Justice Act of 2024)**.

Sincerely,

A handwritten signature in cursive script that reads "Malcolm Augustine". The signature is written in black ink and is positioned below the word "Sincerely,".

Senator Malcolm Augustine