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Testimony in Support of SB0653
Standing - Environmental and Natural Resources Protection Proceedings
(Clean Water Justice Act of 2024)
Senate Energy, Education, and Environment Committee 2/27/2024

February 26, 2024

Chair Feldman and Committee Members,

The federal Clean Water Act was passed in 1972 to protect the chemical, physical and biological integrity of our waters. This law has been responsible for the improvement of waterways across the country.

The CWA was revolutionary not because it was one of the first environmental laws, it wasn't, but in that it created authority for community members to enforce the law against illegal polluters to protect themselves and their communities from pollution. This so-called 'citizen suit provision' was essential to the success of the Clean Water Act, as it recognized that the government is not always willing or able to enforce the law.

In May 2023, the supreme court of the United States decided the case of Sackett vs. EPA, a case involving a permit to dredge and fill wetlands. The court took this opportunity to roll back the definition of waters of the United States – the jurisdictional groundwater of the CWA.

As a result, more than half of the wetlands and waterways in Maryland are no longer protected under federal law. This also means that if you discharge/dump pollution into a water that is not a water of the United States, or "WOTUS", then you do not need a permit and it is no longer illegal to discharge such pollutants.

We are fortunate to live in Maryland, which has a strong definition of waters of the state, and it remains illegal under Maryland state law to discharge pollution or fill these waterways. But without the extension of federal level to these state waters, we lost the right to enforce that law in court.

The Clean Water Justice Act will fix this harm and allow communities harmed by illegal water pollution to enforce state law to stop illegal water pollution, just as they have always been able to do under federal law. This bill is modeled off of the "citizen suit provision" of the Clean Water Act, something that we



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didn't have under Maryland law; and allows all of us, community groups, ordinary Marylanders who are harmed by pollution to enforce the law and protect themselves from illegal pollution.

The Clean Water Justice Act uses the same federal standing provided under the Clean Water Act, and helps Marylanders to protect themselves from the harm caused by the Supreme Court Sackett Decision. It also provides much-needed capacity to both MDE and the MD AG's office to watch-dog pollution and enforce the laws.

The Clean Water Justice Act will:

- Provide a new right for impacted community members to enforce the law in state court the same way that they were previously able to do in federal court under the Clean Water Act.
- Give Marylanders the same degree of access to state courts as they have in federal court.
- Repair the threat to Maryland's critical water resources caused by the U.S. Supreme Court decision.

It's important to note that the bill does not create a right of judicial review of final agency actions, and does not expand standing beyond that provided by federal courts, essentially restoring the enforcement of clean water laws to what existed before the Supreme Court's ruling.

Thank you for your consideration, and I look to the committee to give SB653 a favorable report.

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