



Maryland Chapter
P.O. Box 278
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Committee: Environment and Transportation
Testimony on: HB 596 – “Constitutional Amendment – Environmental Rights”
Position: Favorable
Hearing Date: February 23, 2022

The Maryland Chapter of the Sierra Club strongly supports HB 596, which would add the right to a healthful and sustainable environment to the State’s Constitution provided that the amendment is approved by voters in November. The amendment would also fortify Maryland’s public trust doctrine by recognizing for the first time in our Constitution that the State is trustee of Maryland’s natural resources and is charged to conserve those resources for present and future generations.

Amending the Constitution is a serious matter, and we appreciate the attention that Chairman Barve and this Committee have given to this issue. We also appreciate the attention the amendment will receive in the Senate.

In this testimony we would like to answer the following questions:

- Why does the State Constitution need an environmental rights amendment?
- Will the amendment open the floodgates of litigation, intrude on the legislative prerogative, or stifle growth?
- What has been the experience in the states that have enacted similar language?

We would be happy to answer any follow-up questions from the Committee.

Why does the State Constitution need an environmental rights amendment?

The proposed amendment is based on, and elevates to the level of constitutional authority, rights and responsibilities already recognized in Maryland statutory and common law, and similar provisions in other state constitutions. The amendment states that:

- (A) Every person has the fundamental and inalienable right to a healthful and sustainable environment.
- (B) The right enumerated under subsection (A) of this section may not be infringed.
- (C) The State shall:
 1. Serve as the trustee of the State’s natural resources, including the air, land, water, wildlife, and ecosystems of the state; and
 2. Conserve, protect, and enhance the State’s natural resources for the benefit of every person, including present and future generations.

We believe the rights enunciated in Subsections (A) and (B) of the amendment and the trustee responsibilities set forth in Subsection (C), are the type of important, widely agreed upon, protections and authorities that should be raised to the constitutional level. As Americans and Marylanders, our core constitutional rights – freedom of speech, freedom of the press, freedom of religion, the right to a fair trial, equal protection by the laws – are fundamental to who we are. We expect that every Committee Member joins us in these beliefs. They are bedrock principles to our Nation and State, and they shape the way we as Americans and Marylanders interact with each other and govern.

Over the more than two hundred years since our Nation’s Constitution was written, our core Bill of

Rights freedoms have been sustained. In fact, they have been expanded to cover men and women who were enslaved at the time the Constitution was ratified or, in the case of women, who gained the right to vote. The same applies to our State Declaration of Rights and, again, we expect that every Member of this Committee fully supports these protections and could not imagine our State or Nation without these core guardrails. We all recognize that our State and Nation have not always lived up to our ideals, but we are deeply grateful for the men and women who worked, fought, and died for them. We recognize that they have not been free.

We likewise believe that all Members of this Committee want to leave this generation and future generations a State that is healthful and sustainable. In the more than two centuries since they were established, our Constitutional rights have persisted. Unfortunately, while we have made great advances in life expectancy and other measures of the quality of life, we are on track to leave our children, our grandchildren, and future generations an environment that is seriously degraded. Most of our citizens live in communities with harmful air quality and many of our water bodies are seriously polluted. Even with the Maryland Environmental Policy Act and the dozens of other supporting significant pieces of legislation, we have not done nearly as good a job protecting the environment as we have protected our State Declaration of Rights and Federal Bill of Rights freedoms. We recognize, of course, that some of the biggest environmental threats – including climate change on a global scale – are difficult for Maryland to address without broader national and international support. Yet here Maryland has been a leader, recognizing that its steps make a meaningful contribution and set a valuable example for our sister States and the Nation. We thank this Committee, in particular, for its leadership in those steps.

This amendment does two very important things that this Committee should also fully support. Subsections (A) and (B) establish a right that was first recognized in 1971 as a matter of Maryland statutory law: that every person has a fundamental and inalienable right to a healthful and sustainable environment. It is a right that must not be infringed if we hope to ensure a livable environment in our state.

Subsection (C) recognizes that Maryland's natural resources are a public trust, and that it is the State's job as trustee, the State's fiduciary responsibility, to conserve, protect and enhance those natural resources for the benefit of not just present but also future generations. We expect that a constitutional requirement that the State act as trustee to conserve, protect and enhance a healthful and sustainable environment will bolster the State's authority and responsibility to implement our existing laws and regulations. It will also encourage future legislatures and administrations to consider the objectives of a healthful and sustainable environment when developing statutes and regulations. We also recognize that political winds can change. In recent years, for example, the U.S. Government left a global accord on climate change, approved harvesting of rare old-growth forests, and relaxed other long-established statutory and regulatory environmental protections. The Amendment will put Maryland's environmental health on par with other essential rights. It will help protect Maryland from Federal relaxations and it will help prevent future State administrations from taking such difficult and often impossible to reverse actions in Maryland.

Will the amendment open the floodgates of litigation, intrude on the legislative prerogative, or stifle growth?

This is an important question, and it deserves a serious, evidence-based answer. The answer, based on 50 years of experience in the other states with similar protections, is no. There is no evidence of irresponsible and frequent lawsuits across the other states with similar amendments. First, the amendment will be added to the Maryland Declaration of Rights which is focused on individual rights and the State's responsibilities, and not on disputes and remedies between private parties. Second, courts generally base their decisions upon statutory authorities before deciding cases based on constitutional

provisions. Across all the states with similar provisions, there have been few cases brought and decided based on the states' constitutional environmental provisions. Third, cases where state laws were found unconstitutional under the amendment were compelling. In one case, a Montana law prohibiting the State government from considering arsenic pollution of a river near Yellowstone National Park was found to be unconstitutional under that State's constitutional environmental provision. In Pennsylvania, a court found that localities should not be barred from considering the risks that fracking activities in their jurisdiction would have upon local water supplies. Neither of these cases involves trivial litigation or judicial overreach; and both resulted in meaningful protection of public health.

Importantly, the legislative and executive branches of our State will retain their separate essential constitutional roles in bringing meaning to these provisions. Just as courts and legislatures have addressed abuses of other constitutional privileges (incitement to riot, libel, etc.), we believe Maryland's courts and the General Assembly will give meaning to the amendment. Above all, we do not expect Maryland's courts would take on the role of expert agencies or overturn carefully considered legislation.

What has been the experience in the states that have enacted similar language?

Thirty-six state constitutions, not including Maryland, have some sort of environmental protection provision. Of those, six state constitutions have been amended since the 1970s to confer a personal right to a healthy environment.¹ As indicated above, the experience in those other states has been that their amendments have been used occasionally. In the five decades that those states have had their provisions in effect, few cases were decided based upon them, and then only when the states' actions were egregious. We recognize that some of the above states have environmental challenges that are at least as serious as Maryland's. We do not argue that their environmental amendments have been a panacea. But we do believe that, over time, they have proven to be a useful and an increasingly important and beneficial component of those states' environmental legal frameworks, and it would similarly be useful in Maryland.

One other element of the other states' experiences is the broad support for this amendment. For example, in November 2021, nearly 69 percent of New York voters approved that state's similar amendment, which had previously received approval from the state's legislature in a process broadly similar to Maryland's. It is worth noting that while New York voters approved this amendment, they did not approve three of the other four amendment proposals on their ballot.

In conclusion, we believe that the merits of the proposed amendment are very well supported by legal analysis and practical experience. It would provide important, long-term protections that warrant elevation to inclusion in our State's Constitution. Like other Constitutional provisions, it is intended to establish guardrails that have lasting value and reflect broadly shared principles. There is no evidence from decades of experience that the amendment will produce counterproductive or inappropriate impacts.

Our views on the merits of the amendment are widely shared. With our partners we have gained the endorsement of over 100 organizations in Maryland for the amendment. What is particularly impressive is the breadth of social justice, environmental, and faith-based organizations represented; they look like Maryland. They include the NAACP Maryland State Conference, Maryland League of Women Voters, Maryland League of Conservation Voters, Chesapeake Bay Foundation, Izaak Walton League of America Sportsman's Chapter, Audubon Mid-Atlantic, Maryland Public Health Association, University of Maryland School of Nursing, Maryland Catholic Conference, Episcopal Diocese of Maryland, Maryland

¹ Illinois Const. art. XI, § 2 (effective July 1, 1971), Pennsylvania Const. art. I, § 27 (effective May 18, 1971), Montana Const. art II, § 3 (effective July 1, 1973), Hawaii Const. art. XI, § 9 (effective Jan. 1, 1979), Massachusetts Const. article of amendment XLIX (effective Nov. 7, 1972), and New York (effective Jan. 1, 2022). The Rhode Island Bill of Rights (1987) includes related protections.

Presbyterian Church, Baltimore-Washington Conference of the United Methodist Church, Baltimore and Howard County Boards of Rabbis, and Islamic Society of the Washington Area. The breadth, depth, and thoughtful, public-spirited nature of the support for this amendment is special and meaningful.

We urge the Committee to join us and this impressively representative group of entities and support passage of HB 596 so that the voters of Maryland will have the opportunity to add this amendment to the Maryland Constitution.

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