

Testimony in Support of HB 1101

Standing - Environmental and Natural Resources Protection Proceedings (Clean Water Justice Act of 2024)
Before the Environment and Transportation Committee, March 1, 2024

We support House Bill 1101 because this bill grants individuals access to Maryland courts to enforce Maryland state environmental laws. Under the Clean Water Act, Americans can enforce federal clean water standards in court. The Supreme Court recently altered the test for “waters of the United States” in *Sackett v. EPA* and removed many of the country’s waterways, like streams and wetlands, from this federal protection. Fortunately, Maryland still protects its streams and wetlands under state law. HB 1101 provides people within the state the power to sue in state courts to enforce state environmental laws that protect waters of the state. By allowing greater citizen participation, Maryland can improve the state’s environmental and public health both today, and for generations to come.

I. Citizen Participation Protects the Environment

For decades, the federal Clean Water Act promoted civic engagement with waters of the United States. The citizen suit provision shared the federal government’s enforcement authority to enforce the Clean Water Act with states, communities, and individuals. This share of authority has led to greater citizen involvement in protecting the nation’s waterways. The *Sackett* case unfortunately severely weakens the ability of citizens to engage in protective litigation.

This session, Maryland can codify a similar provision in state law that would let people in Maryland enforce the state’s water quality laws. While this bill does not alter any existing water quality standards, this bill would let people enforce the standards in state court. Individuals and local communities can then use the courts to protect the local environment.

Maryland already relies on the citizen suit provision within the Clean Water Act. Many of Maryland’s most notorious polluters have been exposed thanks to the citizen suit provision. Blue Water Baltimore, in combination with the Chesapeake Legal Alliance, sued Baltimore City under the Clean Water Act for waste oozing out of the city’s wastewater treatment plant at Back River. The treatment plant failed to properly treat its sewage, which overflowed into the Baltimore Harbor. While the problem is ongoing to this day, the nonprofit organizations managed to bring light to the situation and forced the state to get involved in management of the wastewater treatment plant by suing the city.¹

¹ Elizabeth Shwe, Watchdog Group Files Lawsuit Against Baltimore for Wastewater Treatment Plant Failures, Maryland Matters (Dec. 16, 2021), at <https://www.marylandmatters.org/2021/12/16/watchdog-group-files-lawsuit-against-baltimore-for-wastewater-treatment-plant-failures/>.

This bill would ensure that even small streams and isolated wetlands would be protected as well. Maryland’s definition of the “waters of the state”² goes beyond the Supreme Court’s interpretation of the “waters of the United States.”³ Maryland’s definition includes the streams, wetlands, and groundwater that the federal statute now fails to cover. These waterways filter pollution, mitigate flooding, and stem the flow of erosion and sea level rise. These waterways also provide critical habitat for Maryland’s diverse species of plants and animals. This bill would give Maryland people an essential tool for defending our state’s wildlife and natural resources.

I. Protecting the Environment Safeguards Human Health

Environmental conditions are a social determinant of health. A healthy environment offers clean drinking water and water for sanitation. Clean water prevents sickness from bacteria like E. coli. Unhealthy water, on the other hand, can lead to serious health consequences. For example, exposure to toxic chemicals in drinking water can lead to serious diseases like cancer. Exposure to bacteria in water found near the Back River wastewater treatment plant can be dangerous if humans come in contact with the water.⁴ Environmental health and public health connect directly.

Unsafe environmental conditions are not shared equally by all people. Studies demonstrate that children from communities of color and low-income communities experience greater exposure to environmental hazards like neurotoxins.⁵ This bill would allow communities of color and low-income communities to address serious public health concerns by permitting these communities to file state environmental claims related to water pollution.

As previously noted, citizen suits protect the state’s environment. By extension, citizen suits thus protect the state’s public health. This bill would let people in the state of Maryland oversee streams and wetlands that the Clean Water Act no longer protects. Streams and wetlands filter pollution from the state’s waterways and are vital to securing safe drinking water. Specifically, this bill would help local communities protect ephemeral streams and isolated wetlands throughout the Eastern Shore. These waters are essential for filtering local groundwater and ensuring safe drinking water.⁶

Giving individuals and communities access to the courts betters the environment and public health. This bill encourages people in Maryland to be proactive about their environment and health. Environmental stewardship and better public health require greater participation.

² Md. Code, Nat. Res. § 8-101(g), at <https://law.justia.com/codes/maryland/2022/natural-resources/title-8/subtitle-1/section-8-101/>.

³ Sackett v. EPA, 598 U.S. 651 (2023), at https://www.supremecourt.gov/opinions/22pdf/21-454_4g15.pdf.

⁴ Timothy B. Wheeler, Sample This: Disgruntled Residents Monitor Back River for Pollution, Bay Journal (June 7, 2022), at https://www.bayjournal.com/news/pollution/sample-this-disgruntled-residents-monitor-back-river-for-pollution/article_03dea3e4-e283-11ec-858d-2787c951710d.html.

⁵ Allison Eatough, Sweeping UMD Review Finds Deep Disparities in Childhood Exposure to Neurotoxins, Maryland Today (Feb. 26, 2024), at <https://today.umd.edu/sweeping-umd-review-finds-deep-disparities-in-childhood-exposure-to-neurotoxins>.

⁶ Jacob Fenston, ‘Delmarva Potholes’ May Not Sound Worthy of Protection, But They Help Clean the Chesapeake, WAMU 88.5 (Dec. 18, 2018), at <https://wamu.org/story/18/12/18/delmarva-potholes-may-not-sound-worthy-of-protection-but-they-help-clean-the-chesapeake/>.

This testimony is submitted on behalf of the Public Health Law Clinic at the University of Maryland Carey School of Law and not by the School of Law, the University of Maryland, Baltimore, or the University of Maryland System.