March 30, 2010

Via Electronic Mail and Facsimile

The Senate of Maryland
The Honorable Thomas V. “Mike” Miller, Jr., President
thomas.v.mike.miller@senate.state.md.us

The Maryland House of Delegates
The Honorable Michael Busch
Speaker of the House of Delegates
michael.busch@house.state.md.us

Subject: Proposed Legislation to Withhold Funding from the University of Maryland for a Lawsuit by its Environmental Law Clinic

Dear Mr. President and Mr. Speaker:

We are faculty of environmental law clinics from around the country (and one from Canada) writing in opposition to a proposal currently being considered by the Maryland General Assembly to withhold funding from the University of Maryland in response to litigation brought by the University’s Environmental Law Clinic. We write to urge the Maryland Senate and House of Delegates to strip this proposal from the budget legislation because it is inconsistent with the State of Maryland’s long and distinguished history as a seat of good government and because the proposal, if passed, will tarnish the University of Maryland’s reputation for providing an outstanding legal education to its students.

Punishing a law school clinic, its faculty and students, for pursuing litigation in the interest of its clients and for the enforcement of environmental laws serves only the ends of those who seek to undermine the policies advanced by existing laws. The proposal being considered, in which the Maryland General Assembly would withhold funds, scrutinize client lists, and oversee case selection criteria would, at a minimum, interfere with the important work of the University of Maryland Environmental Law Clinic. The punishment being considered by the General Assembly would also, however, harm all those Marylanders who would otherwise have had access to the judicial system through the assistance of the clinic.

We would urge any state’s legislative body to avoid making the case selection process or litigation decisions made by a law school clinic political. We certainly hope and expect that the Maryland General Assembly would not do this at a law school as widely respected as the University of Maryland’s. Our system of government, one that Marylanders share with all of the other forty-nine states and one that American citizens have defended for over two centuries, protects the
decisions of its lawyers to represent anyone, no matter how offensive the client or the case. As we all learned in law school, the role of the lawyer is not to be popular, but to ensure access to the legal system.

Our legal system is not without checks on the actions of lawyers and the University of Maryland Environmental Law Clinic’s work is not immune to those constraints. If the case being litigated by the clinic is not meritorious, then the courts will rule accordingly and dismiss or deny the claims. In addition, like all lawyers, clinic faculty are subject to professional discipline or court sanctions for any claims that are brought for an improper purpose. Further, if the Maryland General Assembly, or the United States Congress, determines that the laws being enforced are not just or fair, then it is within the power of these legislative bodies to change the statutes that serve as the basis of the clinic’s clients’ claims.

Using a legislative process to punish the clinic’s faculty and their student apprentices for bringing such claims, however, is not consistent with the principles upon which our government was founded. Our system of laws, and the ethical rules that guide our actions, represent an aspiration to do nothing more and nothing less than ensure that any person whose rights have been affected have the opportunity to be represented by competent counsel and to be given their day in court.

We represent those who would not have access to the courts without pro bono assistance. It is this mission that our respective clinics seek to fulfill and, while doing so, ensure that our students learn to be skilled environmental lawyers. This mission is a worthy investment of the State of Maryland’s public funds.

The Environmental Law Clinic at the University of Maryland should have the freedom to zealously represent any person seeking to enforce environmental laws including through the use of litigation. Adherence to this principle advances justice and provides the opportunity for University of Maryland law students to learn the important role they can play in making our legal system work for everyone. In addition, continued support for this method of learning is in keeping with the trend in legal education toward expanding clinical opportunities to ensure that law students graduate with the basic skills they will need to become competent, ethical and professional attorneys.

We appreciate that the legislature has an obligation to understand how public funds are being spent but this oversight must be done in a manner that does not interfere with the University of Maryland Environmental Law Clinic’s selection of cases or representation of clients. The current proposal goes too far. For this reason, we ask you to ensure that the proposed language withholding funding from
the University of Maryland in response to litigation filed by the Environmental Law Clinic does not become law.

Respectfully Submitted on Behalf of the Environmental Law Clinic Faculty Listed Below By,

/s/ David K. Mears

David K. Mears
Director and Associate Professor
Environmental and Natural Resources Law Clinic
Vermont Law School

Cc: Governor Martin O’Malley, State of Maryland (via facsimile to 410/974-5252)
Chancellor William E. Kirwan, University of Maryland (via facsimile to 301/445-1931)

The Following Environmental Law Clinic Faculty Join in this Letter:

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