



Senate Environmental Resources and Energy Committee

Senator Mary Jo White
Chairman

Patrick Henderson, Executive Director

Room 168 • State Capitol Building
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May 22, 2007

Larry Frankel, Legislative Director
American Civil Liberties Union of PA
P.O. Box 11761
Harrisburg, PA 17108

Dear Mr. Frankel:

I am in receipt of your memo on behalf of the American Civil Liberties Union of Pennsylvania opposing Senate Bill 354. I introduced this legislation to address the scope of rulemaking petitions submitted to the Environmental Quality Board (EQB or Board).

I am very disappointed that your organization has taken a position on this issue with an apparently minimal level of insight and legal research. Even when I disagree with your positions I usually admire the skill of your attorneys and the quality of your advocacy.

The right to petition one's government, afforded under both the U.S. and Pennsylvania constitutions, is a fundamental right of citizenry, and one that I respect greatly. It is completely different from the ability to "petition" the EQB. This misinformation has been circulated by Penn Future and others and I am surprised that you fell for it. Equating an EQB petition – a bureaucratic process designed to initiate a rulemaking – with a constitutional right is absurd. If this were the case, given the fact that the EQB is unique in its formal rulemaking petition process, one is left to presume that citizens have been disenfranchised by every other state agency in Pennsylvania which lacks a formal petition process.

The EQB is not "government"—it is a board comprised of mostly non-elected people which has the authority to review and initiate regulations. As most lawyers know, any regulation adopted by any agency must have its underpinnings in legislation authorizing such action. Regulations are not a substitute for laws. The legislature created this petition process and it is completely appropriate that we define the scope.

To the best of my knowledge, no petition ever accepted in the past by the EQB would be barred by this bill. The bill is simply a recognition of the fact that we do not have initiative and referendum in Pennsylvania, and that this process does not create it. It clarifies that if a petition is to be accepted, it must deal with a matter which is already the subject of legislation; in other words, the legal underpinnings must exist.

It is worth noting the EQB can choose to reject a petition for a variety of reasons: the Board considered the issue within the previous 2 years; the matter is currently in litigation; general policy considerations; or the petition offers no new substantive information on a matter

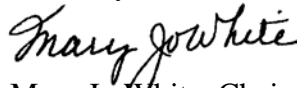
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previously considered by the EQB (23 Pa Code §23.5). I note that these reasons for rejecting a petition were adopted not by statute or regulation, but by EQB internal policy.

It is clear to me that SB 354 does not infringe on the right of any citizen to “petition” their government. SB 354 does not reduce the regulatory authority of the EQB. It does not prohibit any citizen from approaching their legislator, the Governor or the courts to petition for a “redress of grievances”. Rather, it seeks to clarify that certain public policy decisions remain in the appropriate forum.

I hope this clarifies any concerns you have with this legislation.

Sincerely,

A handwritten signature in black ink that reads "Mary Jo White". The signature is written in a cursive, flowing style.

Mary Jo White, Chairman
Senate Environmental Resources
& Energy Committee

cc: All Senators