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HOUSE JOINT RESOLUTION NO. 550

Offered January 20, 1997

Memorializing the Attorney General of Virginia to withdraw his petition for a writ of certiorari in the case of Commonwealth of Virginia v. Browner.

Patrons—Murphy, Crittenden, Darner, Keating, McEachin, Plum, Scott, Van Landingham, Van Yahres and Watts

Referred to Committee on Rules

WHEREAS, the Attorney General has pursued court actions against the United States Environmental Protection Agency (EPA) centering on the ability of citizens to challenge the content of permits issued to emit pollutants to air; and

WHEREAS, the Attorney General, despite repeated losses before the courts in these actions has persisted in hiring outside counsel and in filing motions, briefs and appeals, and continues to do so even in the face of the United States Court of Appeals for the Fourth Circuit decision in favor of EPA that included such findings as "Virginia's proposed reading [of § 506(b)(6) of the federal Clean Air Act] is contrary to ordinary principles of statutory construction and the rules of English usage"; and

WHEREAS, as noted by the U.S. Court of Appeals, the U.S. Congress in passing the federal Clean Air Act, intended that "interested persons who arguably are affected by permit decisions are guaranteed their day in court"; and

WHEREAS, provisions of the federal Clean Air Act have been interpreted by the U.S. Court of Appeals as meaning that the states may allow broader standing to citizens, not more restrictive standing, than that provided in the federal law, as the Attorney General would have it read; and

WHEREAS, the U.S. Court of Appeals found that Virginia's constitutional challenge was without merit because "Virginia is not commanded to regulate; the Commonwealth may choose to do nothing and let the federal government promulgate and enforce its own permit program within Virginia ..."; and

WHEREAS, the Attorney General's most recent action has been to file a petition for a writ of certiorari with the United States Supreme Court seeking appeal of the U.S. Court of Appeals decision to that Court; and

WHEREAS, the citizens of the Commonwealth overwhelmingly support the ability of those negatively impacted by pollution permits to challenge permit content; and

WHEREAS, the 1996 Session of the General Assembly passed legislation granting citizens standing in conformance with standards established by the United States Supreme Court contingent upon the outcome of the case before the Fourth Circuit; and

WHEREAS, the Attorney General's continued challenge to citizens' ability to have a voice in pollution permits affecting them only serves to delay the effective date of the General Assembly action and thwart the will of the people; and

WHEREAS, such actions by the Attorney General unnecessarily expends the Commonwealth's resources and taxpayer funds in pursuit of a goal they do not wish; now, therefore, be it

RESOLVED, by the House of Delegates, the Senate concurring, That the Attorney General of Virginia be urged to withdraw his petition for a writ of certiorari to the United States Supreme Court in the case of Commonwealth of Virginia v. Browner and cease any actions before the Court in furtherance of pursuing this action so that the desires of the citizens of Virginia may be followed; and

RESOLVED FURTHER, That the Clerk of the House of Delegates transmit a copy of this resolution to the Attorney General of Virginia in order that he may be apprised of the sense of the General Assembly in this matter.

INTRODUCED

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