



LARRY HOGAN
GOVERNOR

STATE OF MARYLAND
OFFICE OF THE GOVERNOR

May 25, 2018

The Honorable Thomas V. Mike Miller, Jr.
President of the Senate
H-107 State House
Annapolis, MD 21401

The Honorable Michael E. Busch
Speaker of the House
State House
Annapolis, MD 21401

Dear Mr. President and Mr. Speaker:

In accordance with Article II, Section 17(c) of the Maryland Constitution, I am allowing Senate Bill 875/House Bill 981 – *Online Electioneering Transparency and Accountability Act* to become law without my signature.

This legislation has a number of laudable goals that I strongly support, including modernizing Maryland's election laws to recognize and regulate electronic communication on the web and requiring additional disclosure and transparency for those advertising on social media platforms. It codifies a number of issues that need to be addressed in Maryland, including a requirement to prohibit the use of foreign currencies in Maryland elections. I am in total agreement that these issues needed to be addressed ahead of the 2018 elections, and my administration has long supported and encouraged additional transparency throughout our state and local governments.

A number of the specifics of the bill that establish a regulatory structure at the State Board of Elections to regulate and investigate complaints about online advertising or voter suppression are also important, and I concur with the goals of the bill. I conceptually support giving the State Board of Elections additional regulatory tools and, if necessary, the ability to seek injunctive relief to remove illegal advertisements and to require the sponsors of online ads to include adequate disclosures.

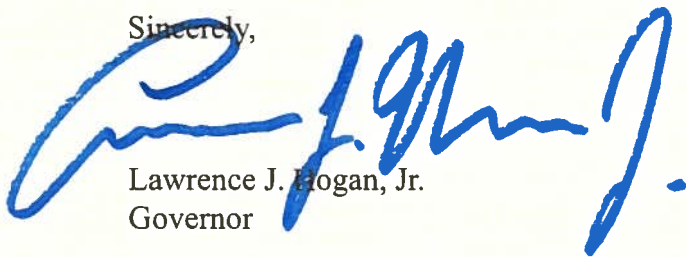
Notwithstanding these admirable features of the legislation and the Attorney General's advice that the legislation is legally sufficient and constitutional, I am not signing the legislation in light of serious constitutional concerns that have been expressed regarding the bill.

Most disconcerting to me is the request for a veto that I have received from the Maryland-Delaware-D.C. Press Association, which represents all of the daily newspapers in our state. The free press is a cornerstone of our republic, and the press corps' concern that this legislation would compel speech by news outlets is a precedent I am deeply concerned about establishing. I am cognizant that there are opposing views on this issue, but ultimately I cannot sign a piece of legislation that could allow the government to coerce news outlets protected by the First Amendment to publish certain material. A number of alternative approaches were recommended - yet unfortunately rejected - that would have achieved the same ends of this bill while ensuring the freedom of the press enshrined in the Constitution remains intact. I encourage the General Assembly to explore these approaches in the next legislative session.

Similarly, I am concerned that the legislation contains vague and overbroad language that could have the unintended consequence of stifling the free speech of citizens who are mobilizing on social media platforms. Stipulating that online materials that "relate" to any candidate or prospective candidate are subject to disclosure and regulation by the State Board of Elections casts a very wide net and I am concerned that groups that are simply exercising their constitutional rights of free speech will unsuspectingly be subject to regulation and possible criminal penalties for merely expressing a political opinion. The legislature could have more carefully drawn a distinction between clear campaign activity versus protected political speech that shouldn't be stifled by the fear of governmental regulation. The constitutional strict scrutiny of restrictions of political speech demands a more careful and precise demarcation of what is subject to regulation and for what purpose.

Should the legislation survive what I expect will be a constitutional challenge on these grounds, I am hopeful that the General Assembly will remedy these deficiencies next session and work with the affected stakeholders to strike a balance on this needed and timely legislation.

Sincerely,

A handwritten signature in blue ink, appearing to read "L. J. Hogan, Jr.", written over the typed name and title.

Lawrence J. Hogan, Jr.
Governor