



April 25, 2018

By Electronic Mail (christopher.shank@maryland.gov)

The Honorable Lawrence J. Hogan, Jr.
State House, 100 State Circle
Annapolis, MD 21401-1925

Re: Online Electioneering Transparency and Accountability Act

Dear Governor Hogan,

The Campaign Legal Center (CLC) respectfully urges you to sign the Online Electioneering Transparency and Accountability Act (OETA). CLC is a nonpartisan, nonprofit organization that works to implement and defend effective campaign finance, lobbying, and ethics laws. Since the organization's founding in 2002, CLC has participated in every major U.S. Supreme Court campaign finance case as well as numerous other federal and state court cases. Our work promotes every voter's right to participate in our democratic process and to know the true sources of money spent to influence elections.

The disclosure of election spending is a cornerstone of campaign finance law. The 2016 elections saw a massive influx of digital political advertising and exposed the ability of foreign actors to influence our elections. In the wake of this fundamental shift, states across the country are grappling with how to make election spending more transparent in the digital age. The OETA would make Maryland a national leader in the disclosure of online political advertising and serve as a model for other states.

CLC has carefully reviewed the Act, and we believe it is a well-crafted and constitutional piece of legislation. The Act is consistent with well-established Supreme Court precedent allowing for reasonable disclosure of campaign spending to "insure that the voters are fully informed about the person or group who is speaking" about a candidate in the run up to an election.¹

¹ *Citizens United v. FEC*, 558 U.S. 310, 348 (2010) (internal citations and quotations omitted).

Beginning with its seminal decision in *Buckley v. Valeo*, the U.S. Supreme Court has upheld the constitutionality of campaign finance disclosure laws against repeated challenges.² In the years since *Buckley*—years in which the Court has considered some of its campaign finance precedent anew—the Court has consistently upheld the constitutionality of election spending disclosure. Most recently in *Citizens United v. FEC*, the Court affirmed the constitutionality of election-related disclosure, stating that election spending “transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.”³ The OETA would be an important step toward providing Maryland voters with this critical information as more political ad spending moves online.

The OETA would significantly strengthen the regulation of digital advertising in Maryland by instituting greater accountability for online platforms. Among other changes to Maryland’s campaign finance law, the OETA would modify the statutory definitions of “public communication” and “electioneering communication” to cover paid digital communications, and apply the same reporting standards applicable to political advertising on traditional media outlets—such as television and radio stations—to communications disseminated through online platforms.

The Act also would introduce new record-keeping obligations for online platforms on which political advertising is purchased. Under the Act, online platforms would have to create publicly-accessible repositories of data about political advertising purchases, which would allow the public to access detailed information about the sources of digital ads. Finally, the Act would prohibit the purchase of political advertisements with foreign currency, closing a loophole exploited by Kremlin-linked groups who used rubles to purchase digital advertisements in 2016.⁴

In conclusion, we respectfully urge you to sign the Online Electioneering Transparency and Accountability Act and provide Marylanders with critical information about who is trying to influence their elections. We appreciate the opportunity to offer our perspective on this important legislation and would be happy to answer any questions you may have about the Act.

Sincerely,

/s/

Catherine Hinckley Kelley
Director, Policy & State Programs

² *Buckley v. Valeo*, 424 U.S. 1, 63-64 (1974).

³ *Citizens United v. FEC*, 558 U.S. 310, 369 (2010).

⁴ Rhys Blakely, *Russia paid Facebook in rubles for US election ads*, The Times (Nov. 1, 2017), <https://www.thetimes.co.uk/article/russia-paid-facebook-in-roubles-for-us-election-ads-cmkj7t9qx>.