March 19, 2020

The Honorable Larry Hogan  
Governor  
100 State Circle  
Annapolis, Maryland 21401  

The Honorable Boyd K. Rutherford  
Lieutenant Governor  
100 State Circle  
Annapolis, Maryland 21401  

Dear Governor Hogan,

Yesterday, the Maryland Legislature passed the first digital advertising tax ever considered in this country. We strongly urge you to veto this legislation. It is counterproductive and almost certain to be unconstitutional.

At a time when businesses are facing unprecedented challenges, it is extremely bad policy and counterproductive to place burdens on the effort to sell. A tax on digital advertising will undermine the enormous benefits that advertising provides to the state of Maryland. According to a model developed by Nobel Laureate in Economics, Lawrence Klein, advertising accounts for 393,667 (14.9%) of Maryland jobs and $101.5 billion (14.6%) of total economic activity in the state. Digital advertising plays an important role in these job creation and economic efforts.

If enacted, the bill will violate the federal Permanent Internet Tax Freedom Act (47 U.S.C. 151, note). That Act’s ban on discriminatory taxes prohibits additional taxes or an alternative tax rate on a good, service, or information delivered electronically that differs from the tax or rate applied to the same, or similar, good, service, or information that is purchased through “traditional” commerce.

There are multiple Constitutional issues raised by this proposed law. This digital ad tax would violate the “Dormant” Commerce Clause of the U.S. Constitution. Additionally, by segregating digital advertising from other kinds of speech, and adversely burdening it, the bill raises serious First Amendment issues.

When our nation is facing some of the most serious economic threats in memory, enactment of this tax will create a very adverse business environment in Maryland, something that is clearly against everyone’s best interest.

Sincerely,

Daniel L. Jaffe  
Group Executive Vice President, Government Relations  
Association of National Advertisers (ANA)