

May 26, 2006

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

Dear Mr. Speaker:

In accordance with Article II, Section 17 of the Maryland Constitution, today I have vetoed House Bill 539 – *Voters' Rights Protection Act – Clarification*.

House Bill 539 seeks to clarify language and intent of Senate Bill 287 - Voters Rights Protection Act of 2005. Senate Bill 287, from the 2005 Session, established civil penalties for attiring or equipping an individual or permitting an individual to be attired or equipped, in a manner that created the appearance the individual is performing an official or governmental function in connection with an election including: (1) wearing a public or private law enforcement or security guard uniform; (2) using an arm band; or (3) carrying or displaying a gun or badge within 100 feet of a polling site on election day. Senate Bill 287 provided exceptions to the law for uniformed officers performing official governmental duties at a polling site and officers and security guards who are either on duty or traveling to and from duty and wish to cast a ballot at their respective polling location. Senate Bill 287, however, failed to specify when and where these prohibitions apply.

House Bill 539 amends the current law established by Senate Bill 287 by specifying that, on election day at a polling site and within an area surrounding the polling site prescribed by the State Board of Elections, a person may not attire or equip an individual or permit an individual to be attired or equipped, in a manner that created the appearance the individual is performing an official or governmental function in connection with an election. While it may not have been the intent of the sponsor during the course of the 2006 Legislative Session, House Bill 539 was amended to add criminal penalties in addition to the current enumerated civil penalties. Specifically, a person who knowingly violates the prohibited behavior contained in House Bill 539 would be subject to a civil penalty pursuant to Section 16-1002 of the Election Code and guilty of a misdemeanor and on conviction would be subject to a fine not more than \$2,500 or imprisonment for not more than 5 years or both. Based upon criminal penalties established elsewhere in the Election Law Article, this penalty is excessive and inconsistent with other penalties for comparable election law offenses.

Individuals who commit acts relating to voter impersonation as defined by the Election Code are not subject to any civil penalties and are subject to a lesser criminal penalty

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than the one contained in House Bill 539. In particular, under Section 16-101 of the Election Code, a person who willingly and knowingly impersonates a voter or other person in order to register or attempt to register in the name of the voter or other person is guilty of a misdemeanor and subject to a fine of not more than \$1,000 or imprisonment for not more than 5 years or both. Individuals impersonating law enforcement officials or security guards seeking to intimate voters should not be subjected to both a civil penalty and a higher criminal penalty than those individuals who engage in outright voter fraud by impersonating a voter in order to create fraudulent voter registrations. Moreover, while Section 16-201 of the Election Code does subject an individual who impersonates another person in order to vote or attempt to vote to the same criminal penalties contained in House Bill 539, Section 16-201 fails to provide an additional civil penalty. Clearly, enacting a law that contains both criminal and civil penalties for the type of behavior exemplified in House Bill 539 is disproportionately high in comparison to other penalties contained in Maryland's Election Code for offenses relating to impersonation and voter fraud.

To this end, I will instruct the State Board of Elections to conduct a comprehensive review of all penalties contained in the Election Code. The State Board of Elections will report back to me prior to the next General Assembly session with recommendations for making all penalties fair, appropriate, and consistent throughout the Election Code.

For the above stated reasons, I have vetoed House Bill 539.

Very truly yours,

Robert L. Ehrlich, Jr.
Governor