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March 23 2022

To: The Honorable Paul G. Pinsky
Chair, Education, Health, and Environmental Affairs Committee

From: Philip D. Ziperman
Consumer Protection Division

Re: House Bill 17 – Campaign Finance – Recurring Contributions and Donations –
Requirements

(SUPPORT BILL)

The Office of the Attorney General supports House Bill 17 sponsored by Delegate Palakovich Carr. House Bill 17 seeks to prevent a donor from being misled into making recurring donations when the donor only intended to make a one-time donation to the political campaign or organization. The use of negative option offers is a practice that has caused widespread consumer harm and is already widely regulated by the federal government in other consumer transactions¹ and the Attorney General's Consumer Protection Division has also taken action under the Consumer Protection Act to protect against marketers that used negative option offers to deceive consumers.²

Political fundraisers for both major political parties (and in both federal and state elections) have used pre-checked boxes, frequently accompanied by confusing disclaimers, to trap donors into making unintended recurring or additional contributions. During the most recent presidential

¹ See e.g., The Restore Online Shoppers' Confidence Act, 15 U.S.C. §§ 8401-8405, and the Telemarketing Sales Rule, 16 C.F.R. Part 310. The Rule on the Use of Prenotification Negative Option Plans, 16 C.F.R. Part 425, the Electronic Fund Transfer Act, 15 U.S.C. §§ 1693-1693r, and the Postal Reorganization Act (i.e., the Unordered Merchandise Statute), 39 U.S.C. § 3009 also address various aspects of negative option marketing.

² See <https://www.marylandattorneygeneral.gov/press/2015/052615.pdf> - AG Frosh Announces \$11 Million Settlement with Classmates, FTD Companies allegedly allowed third-parties to charge for programs consumers did not want or use.

elections this practice and the harm it has caused consumers was widely reported in the media. *See, e.g.,* Shane Goldmacher, *How Trump Steered Supporters into Unwitting Donations*, NEW YORK TIMES (Apr. 3, 2021), <https://www.nytimes.com/2021/04/03/us/politics/trump-donations.html>; Evie Fordham, *Trump Campaign and Allies Refund \$122M to WinRed Donors: Report*, FOX NEWS (Apr. 4, 2021) <https://www.foxnews.com/politics/trump-campaign-refund-winred-donors-2020>; Jeremy B. White, *California Recall Candidates Use Auto-donation Tactic Trump Made Famous*, POLITICO (May 17, 2021), <https://www.politico.com/states/california/story/2021/05/17/california-recall-candidates-use-auto-donation-tactic-trump-made-famous-1382586>. These reports suggested that pre-checked boxes and other aggressive tactics are most likely to harm older donors. *See* Shane Goldmacher, *How Deceptive Campaign Fund-Raising Ensnarers Older People*, N.Y. TIMES (June 26, 2021), available at <https://www.nytimes.com/2021/06/26/us/politics/recurring-donations-seniors.html>. Maryland residents were harmed by these practices. For example, a U.S. Army veteran and Maryland resident filed an online complaint with the Federal Trade Commission stating that he made three contributions but was “charged . . . ten times befor[e] I found out.” In May 2021, the Federal Election Commission voted unanimously to recommend that Congress pass legislation banning the use of pre-checked boxes when soliciting recurring federal campaign donations.³

HB 17 will help prevent Maryland residents from being misled into making recurring donations or donating more than they intended by requiring fundraisers to obtain their affirmative consent before initiating a recurring donation and banning the use of pre-checked boxes for obtaining that consent. The bill also helps ensure consumers are better informed when they opt to make recurring donations by requiring that they be provided a receipt that informs them of (1) the frequency and duration of their recurring donation, and (2) how to stop their recurring donation.

Accordingly, the Attorney General supports the passage of HB 17, which would help combat the use of misleading fundraising techniques that trick consumers into making recurring donations, and requests the Education, Health, and Environmental Affairs Committee provide a favorable report on the bill.

cc: The Honorable Julie Palakovich Carr
Members, Education, Health, and Environmental Affairs Committee

³ *See* Legislative Recommendations of the Federal Election Commission 2021 (May 6, 2021), <https://www.fec.gov/resources/cms-content/documents/legrec2021.pdf>.