

May 24, 1979

Honorable Harry Hughes
Governor of Maryland
State House
Annapolis, Maryland 21401

Re: Senate Bill 569

Dear Governor Hughes:

We have reviewed Senate Bill 569, a bill which makes it a criminal offense to wear and display certain items of political advertising in or near polling places. Because this bill violates the free speech guarantee of the Federal and State Constitutions, we do not approve it.

As passed by the General Assembly, the bill amends Sec. 24-23(a) of Article 33, the Election Code, to add a new paragraph (5). This new paragraph makes it a criminal offense to wear and display any article of clothing, badge, pin or device which supports or opposes any candidate, slate, ticket or party, or relates to any ballot question. There is an exception to this prohibition for the carrying of a personal copy of a sample ballot or campaign literature for personal use. It is our view that this prohibition violates the First Amendment of the Federal Constitution which guarantees the right of free speech and the equivalent provision in Article 40 of the Maryland Declaration of Rights.

Although the protection of the First Amendment is not confined to the "exposition of ideas," it is well understood that one of its major purposes is to protect the expression of political views. Buckley v. Valeo, 424 U.S. 1, 14 (1976). Moreover, the protection of this Amendment extends not only to pure speech but to "symbolic speech" as well, including the wearing of articles of clothing such as armbands which are communicative in nature. Tinker v. Des Moines Independent Community School District, 393 U.S. 503, 505-506 (1969). When a prohibition is directed at speech itself and the speech is intimately related to the process of governing, the Supreme Court has said that "the State may prevail only upon showing a subordinating interest which is compelling, and the burden is on the Government to show the existence of such an interest. Even then, the State must employ means closely drawn to avoid unnecessary abridgement." First National Bank of Boston v. Bellotti, ___ U.S. ___, 98 S.Ct. 1407, 1421 (1978). Where the issue is a restriction on "symbolic speech," that is a mixture of speech and non-speech elements, the Supreme Court has said:

"[w]e think it clear that a government regulation is sufficiently justified if it is within the constitutional power of the Government; it furthers an important or substantial governmental interest; if the governmental