

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
NORTHERN DIVISION**

CHAMBER OF COMMERCE OF THE  
UNITED STATES OF AMERICA  
1615 H Street NW  
Washington, DC 20062,

INTERNET ASSOCIATION  
660 North Capitol Street NW, Suite 200  
Washington, DC 20001,

NETCHOICE  
1401 K Street NW, Suite 502  
Washington, DC 20005,

COMPUTER & COMMUNICATIONS  
INDUSTRY ASSOCIATION  
25 Massachusetts Avenue, Suite 300C  
Washington, DC 20001,

*Plaintiffs,*

v.

PETER FRANCHOT, in his official capacity as  
Comptroller of the Treasury of Maryland,  
301 West Preston Street, Room 206  
Baltimore, MD 21201,

*Defendant.*

Civ. No. 21-cv-410

**COMPLAINT FOR INJUNCTIVE  
AND DECLARATORY RELIEF**

Plaintiffs the Chamber of Commerce of the United States of America, Internet Association, NetChoice, and the Computer & Communications Industry Association (collectively, Plaintiffs), for their complaint against Peter Franchot, in his official capacity as the Comptroller of the Treasury of Maryland, allege by and through their attorneys as follows:

**INTRODUCTION**

1. This lawsuit seeks a declaration and injunction against enforcement of Maryland House Bill 732 (the Act) insofar as it imposes a “Digital Advertising Gross Revenues Tax” on

sellers of digital advertising services. The Act is a punitive assault on digital, but not print, advertising. It is illegal in myriad ways and should be declared unlawful and enjoined.

2. The background leading to the Act’s passage is undeniable: Maryland lawmakers disapprove of large digital advertising companies and intended to penalize them. A centerpiece of the Act’s legislative history is an article, authored by a witness testifying in support of the Act, which accuses large digital advertising companies of “erod[ing]” the “shared values and norms” of American society. *See* Paul Romer, *A Tax That Could Fix Big Tech*, *New York Times* (May 6, 2019), [perma.cc/MZ83-NF5Y](https://perma.cc/MZ83-NF5Y); *see also* Testimony from Paul Romer to Budget & Taxation Committee (Jan. 29, 2020), [perma.cc/EZ4M-ZEGY](https://perma.cc/EZ4M-ZEGY). Maryland lawmakers acted on the belief that large digital advertising companies are “too big to trust” and have created “a haven for dangerous misinformation and hate speech.” Romer, *A Tax That Could Fix Big Tech*. In the run-up to the Act’s passage, that theme was repeated over and over again by the Act’s most outspoken proponents, including Senate President Bill Ferguson, who proclaimed—ironically, over Facebook—that, with the Act, Maryland lawmakers had deliberately “targeted” companies “like Amazon, Facebook, and Google.” *See* [perma.cc/699U-4BQB](https://perma.cc/699U-4BQB).

3. The premise of the law is deeply flawed. Taxing digital advertising revenue will have the opposite of the Act’s intended effect, reducing resources to support the creation and availability of high-quality ad-supported content, leaving the online field overrun by low-quality “junk” content. Meanwhile, the Act will raise costs for consumers and make it more difficult for businesses to connect with potential customers. Simply put, the Act will harm Marylanders and small businesses and reduce the overall quality of internet content—all while doing nothing to stave off the dissemination of misinformation and hate speech.

4. Recognizing the Act’s many infirmities, Governor Hogan vetoed the Act on May 7, 2020, calling it “misguided” and “unconscionable.” *See* Letter from Governor Lawrence J. Hogan, Jr. to Senator Bill Ferguson and Representative Adrienne A. Jones (May 7, 2020),

perma.cc/HC8L-FTAY. But on February 12, 2021, the General Assembly voted to override Governor Hogan's veto.

5. Although the Act is styled as a tax, several features confirm its punitive character, including its severity (up to 10% of *gross* revenues), its focus on extraterritorial conduct, the segregation of its proceeds from the State's general fund, and the legislative history leading to its enactment. Among other things, the legislative history shows that lawmakers believe that the charge cannot be passed to consumers, and that the targets of the law, and they alone, will bear the burden of the assessment. A pass-through prohibition recently introduced in the Maryland Senate would lock in that understanding; if adopted into law, it would expressly prohibit the targets of the charge from passing it on to advertisers as a line item.

6. The Act is unlawful in several ways. First, it is preempted by the Internet Tax Freedom Act (ITFA), which prohibits States from imposing "multiple and discriminatory taxes on electronic commerce." 47 U.S.C. § 151 note. Second, the Act violates the Due Process Clause and Commerce Clause of the United States Constitution by burdening and penalizing purely out-of-state conduct and interfering with foreign affairs.

7. The State is well aware of these defects. In a February 25, 2020 letter, the Office of the Attorney General of Maryland itself concluded that an earlier-introduced version of the Act "would likely be preempted by the ITFA" and requires revisions to avoid invalidation under the federal Commerce Clause. *See* Letter from Sandra Benson Brantley to Delegate Alonzo T. Washington (Feb. 25, 2020), perma.cc/9SNH-S3FU; *see also* Letter from Brian E. Frosh to Governor Lawrence J. Hogan, Jr. (April 22, 2020), perma.cc/Y8RD-KVDJ. The necessary revisions were never made.

8. Plaintiffs accordingly seek a declaration that the Act is unlawful and an injunction against its enforcement.

### **JURISDICTION AND VENUE**

9. Plaintiffs bring this suit under 42 U.S.C. § 1983 and 28 U.S.C. § 2201 asserting violations of federal rights and seeking declaratory and injunctive relief. The Court's jurisdiction is invoked under 28 U.S.C. §§ 1331 and 2201.

10. The Court is not deprived of jurisdiction by the Tax Injunction Act (TIA) because, for TIA purposes, the Act imposes a punitive fee rather than a tax. *See infra* ¶¶ 34-47, 51.

11. This Court has personal jurisdiction over Defendant Peter Franchot because he resides within the District of Maryland and performs his official duties there.

12. Venue is proper in this District because Franchot resides in the District and a substantial part of the events giving rise to the claims here occurred in the District.

### **THE PARTIES AND STANDING**

13. Plaintiff Chamber of Commerce of the United States of America (the Chamber) is the world's largest business federation. It represents approximately 300,000 members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. Among other things, the Chamber works with the federal, state, and foreign governments to achieve a multilateral consensus on the taxation of the digital economy. The Chamber is a 501(c)(6) nonprofit organization headquartered in Washington, D.C. The Act is at odds with the Chamber's policy objectives, and challenging the Act is germane to the Chamber's mission.

14. Many of the Chamber's members will be liable to pay the charge imposed by the Act. The Act will therefore harm the Chamber's members by making them liable for the charge, interfering with their business models, and making it more difficult for them to provide high quality services to their clients and customers.

15. Plaintiff Internet Association (IA) is the only trade association that exclusively represents leading global internet companies on matters of public policy. IA's mission is to foster

innovation, promote economic growth, and empower people through the free and open internet. Its stated position is that state governments should not adopt taxation measures that discriminate against digital services and are not technologically neutral. IA is a 501(c)(6) nonprofit organization headquartered in Washington, D.C. The Act is at odds with IA's policy objectives for technology companies, and challenging the Act is germane to IA's mission.

16. A list of IA's members is available at <https://internetassociation.org/our-members/>. Many of IA's members will be liable to pay the charge imposed by the Act. The Act will therefore harm IA's members by making them liable for the charge, interfering with their business models, and making it more difficult for them to provide high quality services to their clients and customers.

17. Plaintiff NetChoice works to make the internet safe for free enterprise and free expression. It engages at the local, state, national, and international levels to protect the interests of the internet and ensure a bright digital future. NetChoice opposes taxes that discriminate against e-commerce, which threaten the internet's benefits to consumers and small sellers online. NetChoice is a 501(c)(6) nonprofit organization headquartered in Washington, D.C. The Act is at odds with NetChoice's policy objectives, and challenging the Act is germane to NetChoice's mission.

18. A list of NetChoice's members is available at <https://netchoice.org/>. Many of NetChoice's members will be liable to pay the charge imposed by the Act. The Act will therefore harm NetChoice's members by making them liable for the charge, interfering with their business models, and making it more difficult for them to provide high quality services to their clients and customers.

19. Plaintiff the Computer & Communications Industry Association (CCIA) is a not-for-profit membership organization for a wide range of companies in the computer, internet, information technology, and telecommunications industries. Created over four decades ago, CCIA

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