Good afternoon. My name is J.H. Snider. I’m the president of iSolon.org, and I support [HB492](http://mgaleg.maryland.gov/webmga/frmMain.aspx?pid=billpage&tab=subject3&id=hb0492&stab=01&ys=2016RS).

Maryland’s email retention policies are far worse than those for the Federal Government. Maryland’s Public Information Act works tolerably well for public access to non-controversial government emails, but fails miserably when public access to politically sensitive emails is sought. Regarding access to politically sensitive emails, Hillary Clinton’s email practices are actually a model of transparency compared to what is routinely sanctioned in Maryland.

This bill leaves many loopholes for government officials who want to skirt the intent of the law. It nevertheless is a giant improvement over the status quo, which is why I wholeheartedly approve it.

My written testimony consists of links to some background resources that support HB492.

First is a link to [eLighthouse.info](http://elighthouse.info/), which includes a wealth of Public Information Act correspondence regarding requests for official email concerning politically sensitive subjects from the Anne Arundel County School Board and the Anne Arundel School Board Nominating Commission.

Second is a link to my *Washington Post* op-ed, [Maryland’s Fake Open Government](http://www.washingtonpost.com/wp-dyn/content/article/2010/04/17/AR2010041702662.html), which discusses some of the problems addressed in this bill.

Third is a link to my *Baltimore Sun* op-ed, [The Clinton email scandal: a double standard?](http://www.baltimoresun.com/news/opinion/oped/bs-ed-pia-policies-20150401-story.html), which I believe was the immediate inspiration for this bill. The contents of that op-ed are copied below:

Underpinning the coverage of the [Hillary Clinton](http://www.baltimoresun.com/topic/politics-government/government/hillary-clinton-PEPLT007433-topic.html) [email scandal](http://www.baltimoresun.com/news/opinion/bal-hillarys-matter-of-convenience-20150313-story.html) is a double standard: She is being pilloried for email practices that are widely used throughout government from local school districts up to the federal level, from junior up to senior administrators and from many past as well as current officials.

Admittedly, the [press has tried to grapple](http://www.baltimoresun.com/news/maryland/politics/bal-beyond-clinton-many-2016-hopefuls-have-used-private-email-20150307-story.html%23page%3D1) with the double standard by comparing her practices with those of other government officials in similar positions, such as presumptive presidential nominees ([Martin O’Malley](http://www.baltimoresun.com/topic/politics-government/government/martin-omalley-PEPLT007459-topic.html), [Jeb Bush](http://www.baltimoresun.com/topic/politics-government/government/jeb-bush-PEPLT007436-topic.html), [Rick Perry](http://www.baltimoresun.com/topic/politics-government/government/rick-perry-PEHST001561-topic.html) and [Scott Walker](http://www.baltimoresun.com/topic/politics-government/scott-walker-PEPLT006878-topic.html)) and former secretaries of state ([Colin Powell](http://www.baltimoresun.com/topic/politics-government/government/colin-powell-PEPLT0007531-topic.html)).

For example, a recent [Baltimore Sun story](http://www.baltimoresun.com/news/maryland/sun-investigates/bs-md-sun-investigates-emails-20150321-story.html) about former Maryland Gov. Martin O’Malley observed that Mr. O’Malley used private Gmail for all his official communications and that, like Ms. Clinton, he and his staff, rather than an independent arbiter, got to decide what was worth preserving as a public record.

However, compared to my local Maryland public school system in Anne Arundel County, which only retains email for 30 days, these other email retention policies may be paragons of openness. Because [Maryland’s Public Information Act](http://www.baltimoresun.com/topic/crime-law-justice/laws-legislation/maryland-public-information-act-EVGAP00043-topic.html)allows up to 30 days to fulfill an information request, the school system’s 30-day retention policy means emails with potentially embarrassing information are effectively exempt from disclosure. No practical penalties appear to exist for deleting emails in response to a Public Information Act request, either. This loophole in Maryland’s Public Information Act makes a mockery of Mr. O’Malley’s rejoinder to press inquiries about his email use last month: “in our state, whether you used a personal email or a public email or a carrier pigeon, it was all a public record subject to disclosure.”

So let’s stop pretending that Ms. Clinton’s email practices are [uniquely bad](http://www.baltimoresun.com/news/opinion/bal-voters-not-likely-to-remember-hillary-clintons-email-habits-20150316-story.html). Public email record keeping laws are riddled with loopholes, which public officials routinely exploit. Then, because hiding information implies having acted adverse to the public interest, they have a strong incentive to deny and otherwise cover up such practices.

Framed in economic terms, there is an imbalance between the supply of scandalous email behavior and the demand for reporting on it. Public officials’ supply of such behavior is bottomless, but the effective demand for investigating and exposing it is not. It’s a winner-take-all political market where the press and political elites have proven it’s only worthwhile for them to go after the highest profile targets.

[A new paradigm](http://www.baltimoresun.com/news/maryland/baltimore-county/towson/ph-editorial-foi-meas-20150325-story.html) for government email public policy is needed. Public officials should be banned from using private email for public business. Period. Doing otherwise should be meaningfully penalized, including with firing. If personal and public emails are commingled, any privacy right over personal emails should be forfeited.

Most important, the public record foxes should no longer be allowed to guard the public record chicken coops. A mechanism should be created for one trusted independent party to archive email records while another verifies claims about the existence and contents of those records. Emails regarding any public business should be copied and archived at the instant of their creation or receipt on the computer system of the agency with ultimate responsibility for email archiving, for example, the National Archives for federal agencies and the Maryland State Archives for Maryland state and local government.

Emails containing private or sensitive information need not be made public. However, if a designated judge, legislative oversight committee, inspector general or public information officer has reasonable cause to believe a public official is violating either the letter or spirit of a public records law, they should be able to verify the official’s claims.

The advent of cloud-based email storage makes such email policies economically feasible. With today’s storage costs, an individual’s lifetime of work emails can be stored for less than $10. Many large-scale businesses already have comparable centralized archiving systems and policies in place for their employees who use email for business purposes.

There should be no double standards in enforcing public record laws. But for that to be a practical reality, we must rethink the architecture of email retention and disclosure.

The Clinton email scandal has legs because it is a presidential and partisan issue. But it risks becoming a witch hunt unless set in a larger and fairer context: the [propensity of our public officials](http://www.baltimoresun.com/news/maryland/sun-investigates/bs-md-sun-investigates-mta-pia-20150321-story.html) throughout government to hide their controversial actions and the reasons — some good but mostly not — our right-to-know laws facilitate such secrecy.

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