

My name is S. Paul Jordan and I am submitting this written testimony at this time in opposition to HB 1349 due to the fact that such legislation should be considered as violating N.D. Const., Art. I, Sec. 21, by allowing acts of discrimination perpetuating a terrible good ol' boy style of government that results in favoritism and unequal treatment for citizens.

The inclusion of "exempt" in N.D.C.C. Ch. 44-04 creates abusive exclusion by public entities through granting discretionary authority that results in discriminatory acts on who may receive a copy of records and who may not. Within certain wording in HB 1349 the use of the word "exempt" is added related to records, where public entities will be able to both pick and choose who can receive copies of records and who will be excluded.

This is now the fourth straight legislative assembly where Rep. Bill Devlin, a former President of the North Dakota Newspaper Association (NDNA), has introduced some form of legislation that benefits the media at the expense of the people's own rights to have access to records because the less the people can have access to regarding records that the people want access to the more dependent the people are on the media.

HB 1337 was introduced by Rep. Devlin in 2015 to allow any public entity to make it cost prohibitive for the people to request or obtain public records at the same rate that the media obtained records and HB 1337 violated N.D. Const., Art. I, Sec. 21, due to its failure to require that the wording added to N.D.C.C. § 44-04-18(2) be applied to all equally instead of applying to the people however a public entity wants while ignoring it for the media. HB 1337 received false testimony by then Assistant Attorney General (AAG) Sandra DePountis since it appears that oral testimony is not given under oath, so perjury does not apply.

HB 1345 was introduced by Rep. Devlin in 2017 to add language to N.D.C.C. § 44-04-18(4) to allow any public entity to bypass requirements in N.D.C.C. § 44-04-18(2) by allowing a public entity to merely provide its website address instead of the specific URL to the webpage where the requested record is allegedly located in an electronic format; making it as difficult to find a record on a website, like trying to find a book in a library lacking the Dewey Decimal System and when the books are neither in alphabetical order by title nor by author.

HB 1345 also created N.D.C.C. § 44-04-18(13) to allow any public entity to permanently deny any person access to public records merely based on the word of that public entity that would deny any person that right to records that would otherwise be deemed public under N.D. Const., Art. XI, Sec. 6, and N.D.C.C. § 44-04-18(1) that would represent discrimination that violates N.D. Const., Art. I, Sec. 21, because any public entity can use N.D.C.C. § 44-04-18(13) against any person without applying it to either another person or to the media.

Further, and though a public entity invoking N.D.C.C. § 44-04-18(13) grants a person the right to request an opinion under N.D.C.C. § 44-04-21.1 to challenge the actions of a public entity, the North Dakota Office of Attorney General (OAG) uses a layperson, not licensed to practice law in North Dakota, to reject opinion requests properly and timely made under N.D.C.C. § 44-04-21.1(1) and the OAG has sent anonymous letters to hide who at the OAG lied to reject properly and timely opinions that were submitted to the OAG.

Further still, and though the North Dakota Supreme Court stated in *Saefke v. Stenehjem*, 2003 ND 202, ¶ 13, 673 N.W.2d 41, that the Attorney General has a statutory duty under N.D.C.C. § 54-12-01(19) to issue an opinion [requested under N.D.C.C. § 44-04-21.1], N.D.C.C. § 44-04-21.1 is useless rhetoric because it fails to include language mandating when an opinion has to be issued by. Though Section 8 in SB 2003 in 2015 sought to rectify this oversight and error, then Governor Jack Dalrymple vetoed it on May 12, 2015.

HB 1345 resulted in false testimony given by then AAG DePountis since it appears that oral testimony is not given under oath, so perjury does not apply and the OAG could not produce a copy of even one record that supported the false testimony given by then AAG DePountis.

HB 1117 was introduced by Rep. Devlin in 2019 to add language to N.D.C.C. Ch. 46-05 by creating N.D.C.C. § 46-05-09, such that newspapers would be held harmless for errors created when posting notices of public meetings electronically on websites.

Now comes HB 1349, which attorney Jack McDonald spoke in favor of on February 5, 2021, before the House Political Subdivisions Committee on behalf the NDNA and the North Dakota Broadcasters Association (NDBA) because it would allow the media to have access to records when the public could still be denied access to those records based on HB 1349.

To again voice objections to HB 1349, please keep in mind of the abuses that have occurred as a result of the misuse of having records classified as “exempt” because it means that any of the members of the state legislatures, or a member of their extended family, could contact police to report unlawful activity and under N.D.C.C. § 44-04-18.7 all records containing information on them could be withheld from them but those same records could be released to the suspects based on N.D.C.C. § 44-04-17.1(5) that allows public entities to have discretionary authority on who can have access to “exempt” records.

HB 1349 will expand N.D.C.C. § 44-04-17.1(5) to include “medical records” by making those records “exempt” so that public entities can disseminate “medical records” however a public entity wishes whether or not a person the “medical records” are on wants them withheld while a public entity can withhold “medical records” from the person the “medical records” are on. What if those are your “medical records” or are on a member of your extended family, which complete strangers, to include members of the media, could get their hands on at the discretion of public entities but you could neither get them nor could members of your extended family?

Nothing in N.D.C.C. Ch. 44-04 grants a person access to any records that contains information on them, so that a police state can exist where the people cannot see both records government created on them and records containing information on them. This is not China or Russia doing it, but North Dakota on its citizens.