

I am Will Stevens and I live in Shoreham Vermont. I have lived in Vermont since 1977 and although I am not by any definition a “real Vermonter,” I moved here because I wanted to contribute to the culture of what I believed being a “Vermonters” really means. I have served Shoreham over the years in a variety of ways, including as a member and Chair of the Planning Commission, member of the Zoning Board, past and present member of the Select Board, and 13 or so years as Town Moderator. I also proudly represented the Addison-Rutland District in the Legislature from 2007-14, which I like to say helped prepare me for my current status as a member of the Shoreham Select Board. My wife Judy and I just completed our 36<sup>th</sup> year owning and operating an organic vegetable farm, and we are happy living in a rural community of about 1200 people.

One of the things that I came to believe during my eight years in the State House was that the “State” has taken to acting in ways that frankly disrespect 200-plus years of cultural practices and heritage by taking them for granted, and even worse, by condemning the traditions of community service, participatory democracy and local governance to a death by one thousand cuts. Often (for example, in the case of Act 46), it is done in the name of “efficiency,” usually at the cost of participation. I am here to remind you that democracy is, by design, inefficient, and the inefficient design is actually meant to encourage participation. (Dictatorships, on the other hand, are a more “efficient” model of governance . . . .)

I appreciate having the opportunity to present testimony to the House Gov Ops Committee if only because, in Vermont, the process and practice of governing is still relatively up close and personal, and I’ve learned that one needs to step up and work for those things that they support because there’s a chance that others might actually be actively working against them. Frankly, to not speak up would be an abrogation of my responsibilities as a citizen, community member, and believer in participatory democracy.

It is with this perspective that I would like to comment on the changes proposed to the Open Meeting Law contained in Committee bill 18-0015, v.1.4.

(But first I would be curious to learn where the motivation for the changes comes from!  
What is the problem that the changes seek to address?)

With regard to the specific language in the proposed amendment, the language in Section 1, sub 2(A) is confusing . . . “Meeting” includes each communication within a series of communications of any kind involving a quorum of the members, directly or through intermediaries, to discuss or take action on any business of the public body, even if the individual communication does not involve a quorum of the public body.

I struggle to understand the progression of “each,” “series of,” and “individual” communication. Should “individual” actually read “original?” Since this sentence expands

the definition of “meeting,” how would such a “meeting” be properly warned? How would the “quorum of members” be determined in such a “series of communications?” (i.e. if the number of people representing a quorum was reached through simultaneous, consecutive, sequential and/or in aggregated fashion?) Would an “intermediary” count towards the quorum? What is the intent here? If it is to limit business-related communications between board members outside of properly warned meetings, then how is that intent not already covered in existing law, now (B) in the committee bill? In Moderator-speak, I view this as a negative position (as opposed to an affirmative one), and as such, Robert’s Rules advises us to deny or rephrase such motions, because they can be cumbersome and difficult to understand. People have a right to know what they’re voting on.

I can live with the proposed language changes in Section 1, (C) and (D).

I take strong exception to Sections 5-9 of the Committee bill, which creates an Ombudsman position. I understand the desire to create new governmental positions, boards, and/or authorities, especially when it comes to solving a perceived problem. I created my own mischief when I was on the House Ag and Forest Products Committee with Rep. Toleno. That said, I can find no rational reason for creating another level of bureaucracy that will, I fear, continue the state’s chilling approach to public service and participatory democracy. It effectively creates yet another communications barrier between people who seek to know and people who serve (people, I might add, who are often neighbors). I can’t see how an Ombudsperson will productively encourage a culture or environment of robust citizen engagement and participation. I particularly have a problem with the idea that an attorney tasked with interpreting and overseeing compliance with the Open Meeting Law, whose charge is to investigate complaints against government bodies, can impartially mediate a dispute between a member of the public who has served an OML non-compliance complaint on a municipal board and the board itself. Mediations typically occur when two or more parties want to bring in outside help to resolve a dispute. If the dispute is about non-compliance, what is to mediate, and what is it about the current system that isn’t working? The steps and penalties are already spelled out in Statute, and if citizens can’t work things out between themselves, they can hire attorneys to do it for them . . . .

On the other hand, binding arbitration is when an outside facilitator considers the positions taken by the respective parties and imposes a decision that binds the parties to a particular course of action. It is a completely different form of conflict resolution than mediation. I can’t imagine a scenario where the complainant would have to comply with any sort of a binding agreement; the burden falls clearly to the cited board. Statute already spells out the appropriate course of action and implications for non-compliance – what value does an ombudsperson bring to this equation? In my view, the deck is stacked against the board even before a complaint is brought. From the perspective of a public servant, Who needs it? The

integrity of the mediation process is diminished when the threat of a binding decision is hangs over the discussion. There is nothing to gain for the individuals who serve on the Board. If they can't – or won't – comply with the existing OML, will one more person telling them that they're "bad" make any difference? On its face the proposal appears to be biased against local bodies, and moreover, I can't see that the ombudsperson would do anything that isn't already being done by individuals, towns, their respective attorneys (if any), and the AG's office.

Laws are often written with the idea that a legal framework provides a foundation of expected societal norms. Sometimes laws serve the people well, and sometimes they seem to serve the lawyers better. I see the tinkering in Sections 1 and 5-9 of version 1.4 of the Committee's bill as being a goldmine for attorneys and a landmine when it comes to the future of Vermont's culture of municipal service.

I look at these proposals as well-intentioned, in that they purport to support the public's right to know, but detrimental to the concept of community service. Rather than encourage adversarial positions between the public and elected (or appointed) municipal officials, couldn't the state encourage "best practices?" This would include supporting the work of the Vermont League of Cities and Towns, and using the laws presently on the books and the media (i.e. bad press) to make examples of the bad actors. A truly progressive approach to this situation would be to encourage more public service and engagement, instead of putting additional burdens on those who serve. An informed citizenry is a strong citizenry.

If the committee's goal is to create a culture of best practices for municipal boards, I would encourage you to develop a list of what that would look like, and identify the steps needed to get there. It's important to remember that the "public" populates these boards! Encouraging public service will prove to be much more resilient than encouraging the perception that those who might serve will be punished.

(Interestingly, it took me about 20 minutes of noodling around the Committee's web page to find a current draft of the committee bill . . .)

On another note:

I recently attended a joint meeting of the Shoreham Select Board (4 members), Planning Commission (6), and Zoning Board of Adjustment (5). Fourteen community members were there, along with an attorney hired for the purpose, to develop a response to seven Open Meeting Law complaints filed against the three boards by a citizen. What was remarkable about this was the fact that nearly everyone who should have been there was there. Of the fourteen who showed up, two are retirees and the other twelve are lucky enough to have full

time jobs. They cared enough to give up an evening at home to do the right thing, which in this case meant complying with state law.

Incidentally, each municipal body currently has at least one vacant (unfilled) seat. While it looks like some of these will be filled after the Town Meeting elections, finding people to serve on boards in small communities is getting harder, not easier. Members are essentially community volunteers – the Planning Commission and ZBA are unpaid positions, and for years the first thing our Select Board has done at its first post-Town Meeting organizational meeting is to vote to forego their \$50.00 annual stipend. I mention this because I am here today to advocate for kindness. I would like this committee to please be kind to the people who serve their communities!

What does kindness look like? In this case, it might simply be “Do no harm.” In my dream world it would look like facilitating and encouraging democratic participation and engagement at the local level – something that has become even more fashionable nationally since the last election. The Vermont League of Cities and Towns has been doing this for years, and I would respectfully ask the Committee, “How have you helped the League lately?”

Why do I care about this? It stems from my belief in the concept of Social Capital, which I define as representing the value brought to communities by people who actively engage with and in them. Two aspects that contribute to Social Capital are Community Service and Civic Engagement. For rural communities, Social Capital augments and sometimes replaces the need for actual capital (i.e. money), which in turn serves to keep everyone’s out of pocket costs down. To understand the concept of Social Capital better, just imagine the costs to municipalities of not having volunteers on town rescue squads, fire departments, and municipal boards. Talk about an affordability problem! I believe that the level of Social Capital can be correlated to the level of community cohesiveness and connectivity, and I would like to see it encouraged, not discouraged.

Last, I support H.700 as proposed, and would ask you to consider also changing the language in 1 VSA section 314 (b) so that “. . . ~~calendar~~ days” becomes “. . . business days.” The present language makes compliance very difficult, especially around the holidays, when six of the ten days could be weekends or holidays, depending on when the complaint is received.

Thank you very much for your consideration, and thank you for your service.

Will Stevens

Shoreham, Vermont