

## TESTIMONY RE: H.111 (Vital Records)

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As Vermont State Archivist and the Director of the Vermont Archives and Records Administration (VSARA), which issues directives for management of public records by public agencies, maintains and preserves permanent records of the state (regardless of format), and is responsible for providing access to and issuing certified and informational copies for the majority of state vital certificates (1760s – 2011), I previously testified on the three hats I wear when it comes to providing testimony on a bill such as this one: (1) Records Management; (2) State Archives; and (3) Business Processes.

The comments and thoughts that I shared on January 26, 2017 regarding H.111 remain the same, particularly around informational copies. I still find it difficult to justify (1) requiring an application for informational copies and (2) charging a fee for an informational copy. This is largely due to the unique history behind the creation of the card index that comprises the original statewide registry of vital events, which dates from the 1760s until 1980 when the card system was discontinued.

Initiated in the early 1900s, the statewide registry of vital events evolved into a comprehensive centralized card system containing records of all of Vermont's vital events from all towns. A series of legislative actions – Act 92 of 1919 in particular, which required all towns to transcribe, in full, records of births, marriages, and deaths in the possession of the town and churches as well as inscriptions of gravestones for all individuals who died prior to 1870, and transmit the cards to the Secretary of State's Office – became the driving force for its sustainability as well as use.

After 1919, subsequent legislation reinforced and, in some cases, compelled town clerks to complete the transcriptions and submit their cards to the State and do so on a regular and ongoing basis. The overarching intent was for the records to be on file – under one authority – for public use. In the 1970s, however, use of statewide registry began to shift from historical to increasingly legal.

There are approximately 300 pages of documents labeled "Vital Records Controversy" in the records of former Secretary of State James A. Guest. These documents outline the events leading to Act 56 of 1979, including the original bill drafts and related correspondence. While the records have all that one might expect from a "records controversy," the events, surprisingly, seem to have very little to do with contemporary vital records issues – even though there was growing awareness of national concerns related to vital records security and fraud.

Instead, the simple decision to microfilm the statewide registry to protect the cards from alteration, theft and damage and make the microfilm available through the then Public Records Division's research room was all that was needed to set off a firestorm among staff and the public. The core issue was the misperception or belief that the records were being closed. While it does appear that access may have been impeded for a short period of time after July 1, 1979, the statewide registry of vital events referenced in these documents is very much the same registry the public has had access to, and has continuously used, for informational purposes for more than 100 years.

For the Committee's review, at its leisure, I have attached a chronological log of the series of events that led to Act 56 of 1979 and, shortly thereafter, Act 142 of 1980 (An Act to Modernize and Improve Laws Relating to Vital Records). The current vital records laws are largely based on these two acts with relatively few legislative changes in last four decades.

## Chronological Log of Events based on Secretary of State James A. Guest's Records

**1976:** The Tax Reform Act of 1976 (P.L. 94-455), in relation to Social Security, coupled with the 1976 report on criminal use of false identification by the Federal Advisory Committee on False Identification impacts both requests for vital records and the management, particularly security, around vital records. Office of Secretary of State begins to see steady increase in workload within its Vital Records section.

**March 1977:** Marlene B. Wallace is hired as the Director of Corporations and Records Division within the Office of the Secretary of State. Described as a "trained archivist who began to implement changes in office procedure in order to protect certain vital record," Wallace assumes, from the Secretary of the State, the direct supervision of Vital Records section, which was comprised of one long-time clerk (originally hired in November 1953) and the clerk's assistant. Clerk's duties were defined as "searching for the records of births, deaths, marriages, cemetery records, and divorce," including "the issuance of records and the filing of records."

**May 9, 1977:** Wallace sends internal memorandum to Secretary of State James A. Guest regarding microfilming and storing of original vital records. Memo describes the existing vital records cards (birth, death, marriage, divorce, adoption, and change of name) kept in the Vital Records section of the Corporations and Records Division of the Secretary of State's Office.

Wallace also describes how researchers will continue to access and research the records, on microfilm, at the Public Records Division's research facility at 6 Baldwin Street<sup>1</sup>. Decision to microfilm vital records and redirect researchers to the Public Records Division to use microfilmed vital records is based on a meeting Wallace had with the Director of Public Records.

During that meeting, the Director of Public Records informed Wallace that those seeking vital records, particularly researchers, regularly come to Public Records' research facility when the Vital Records Office is closed to use early Vermont vital records that were previously microfilmed by the Mormon Church and later purchased by Division of Public Records.

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<sup>1</sup> By this time, the Public Records Division had a long history of operating a public research room or library where members of the public could research microfilmed copies of state records as well as records of interest from other states. It was not uncommon for all three branches of State government to have their records microfilmed by the Public Records Division and available to the public through the public research room. The Public Records Director had the authority to require agencies with records frequently requested or used by the public to have their records microfilmed and made available through the public research room.

**May 18, 1977:**

Wallace sends second internal memorandum to Guest regarding: (1) plan to microfilm the approximately 2,200,000 vital records cards; and (2) arrangements she made with the Public Records Division to have the microfilm available for public research through Public Records' research facility at 6 Baldwin Street.

The estimated cost for microfilming is \$28,000 over the course of about three year and Wallace states that the original paper cards would be transferred to Public Records for non-current storage (or possible destruction after filming).

In her memo, Wallace also notes that only the Secretary of State is authorized to certify vital records at the state level and while certifying copies from film is legal, the authority to certify vital records would need to be extended to the Public Records Division of the Agency of Administration. Ms. Wallace offers two options for doing so:

- 1) Transferring the Public Records Division of the Agency of Administration to the Secretary of State's Office;
- 2) Legislative action granting such certification authority to the Public Records Division.

Wallace recommends option 1 as it would bring the archival functions currently divided between Public Records and the Secretary of State together and the Secretary of State's Office could expand the number of Public Records staff by transferring the two vital records staff members to Public Records once the microfilming project was complete. Those staff members, once reassigned, would continue the management functions of receiving and processing incoming vital records (approximately 2,000 per month) as well as certification and reference requests.

**June 1, 1977:**

Ms. Wallace sends formal request to the Genealogical Society of Utah for the proposed microfilming of Vermont's vital records dating 1871-1977 to be completed over a three-year period with the most recent block of records to be done the summer of 1978.<sup>2</sup>

**July 1977:**

Ms. Wallace informs Vital Records Section staff the decision has been made to microfilm the vital records cards and direct researchers to use the microfilm at the Division of Public Records. Decision is met with opposition.

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<sup>2</sup> The State of Vermont was a frequent client of the Genealogical Society of Utah as the Society would often microfilm records of interest to their members (e.g. vital, probate, land and other records) for a lower cost or no cost if the State allowed the Society to retain a copy of the microfilm for its own libraries. This arrangement is still in practice today.

**September 1977:** Assistant to the Vital Records Clerk resigns and matter is later investigated as possible harassment by Wallace (but dismissed).

**August 1977:** Wallace becomes aware of a memo being circulated by a woman “who regularly uses the vital records in connection with her genealogical business” alleging that the early Vermont Vital Records microfilmed by the Mormon Church is inaccurate and the closing of the original paper cards would result in dire consequences.

Wallace learns, from the Director of Public Records, that his staff, over the course of 20 years, is only aware of approximately ten records filmed out of order or missing from the microfilm. Wallace makes arrangements for corrections to the film to be made.

**September 16, 1977:** Wallace issues a memorandum to “All Researcher Using the Vermont Vital Records Collection” with the subject line: “Microfilming of Vital Records.”

In her memorandum, Ms. Wallace informs researchers she is well aware of the public’s use and appreciation that “vital records for all Vermont towns are in one place,” something unique to the State of Vermont, but the present card system is “showing serious signs of wear and tear” and that the Secretary of State’s small staff is also unable to “adequately protect the cards from being altered or even removed altogether.”

In stating that “it is essential to preserve the information contained in the vital records,” Ms. Wallace concludes her memorandum by outlining the Office of the Secretary of State’s plans to:

- 1) Microfilm the existing vital records card files;
- 2) Store and preserve a security copy of the microfilm;
- 3) Make a reference copy of the microfilm available for use through the Public Records facility located at 6 Baldwin Street; and
- 4) Microfilm new vital records as they are returned from the Department of Health in five-year blocks.

**October 1977:** Wallace becomes aware of some researcher circulating inaccurate information about the Secretary of State’s Office’s plan to microfilm vital records, this time alleging that a bill would be brought before the Legislature in January to change the duties of town clerks for vital records certification and changing the use and location of the state’s vital records card files.

**February 1978:** Micrographics unit with the Division of Public Records re-films early Vermont vital records using the original source cards at the request of the Secretary of State’s Office.

**April 1978:**

Researcher circulates third letter, now extending to state officials, members of the General Assembly, and researchers from out-of-state. Wallace responds to letters of concern regarding the “microfilming and subsequent closing for research use of the vital record card file” clarifying that the records will remain open and available and microfilming the records is simply protect the information and records as the original paper cards are deteriorating “at a rapid rate.” Often attached to the responses are a copy of the Ms. Wallace’s September 16, 1977 memo and the Secretary of State’s Office researcher rules on accessing the card file.

Guest also receives formal communications from Governor Snelling about complaints coming to the Governor’s Office concerning a “closing down’ of the vital records cards” in the Secretary of State’s Office.

**April 21, 1978:**

Wallace provides copies of her replies to Vital Records Section staff to assure they understand how the Secretary of State’s Office is managing the complaints and the Office’s response. Vital Records Clerk declines to sign statement that she understands changes being made to office procedure.

**April 27, 1978:**

Vital Records Clerk disciplined by Wallace regarding “closing of card files” and clerk’s previously implied agreement to microfilming plan. Memorandum documenting discipline also highlight’s Wallace’s concerns on clerk’s management of card files, specifically her knowledge of researchers:

- 1) Removing of cards from the vital records room
- 2) Altering records
- 3) Misfiling cards
- 4) Accessing cards when the vital records room is closed
- 5) Being denied access if they are from out-of-state

**April 28, 1978:**

Vital Records Clerk does not return to work. Matter begins to be addressed through the Department of Personnel.

**May 1978:**

Guest responds to Governor. To show that the records are not being closed, recent communications sent by Wallace to constituents as well as Wallace’s September 16, 1977 memo are attached to Guest’s response to the Governor.

Guest also responds to memos from the Senate regarding complaints and concerns some Senators have received from constituents. Some complaints reference a plan of the Secretary of State’s Office to create more space for its Corporations section as the reason behind the Office’s plan to “retire the states oldest portion of Vital Records (1760-1870).” Wallace individually responds to legislators regarding the “current flood of misinformation and rumor.”

**August 2, 1978:**

A member of the public, Howland Atwood of Windsor, has his letter to the editor of the Burlington Free Press published. Under the title, "Valuable Card Files: Preservation of Historical Facts," writes that the Office of the Secretary of State in Montpelier plans to "retire" the card files of vital statistics and that the records will no longer be available to researchers.

Citing not only the value and interest in the records, Mr. Atwood cites that the gathering of vital record information from all over the state of a period of several years was done at taxpayer expense and therefore should never be withdrawn from public use. He also notes that the cards include gravestone information that is not available elsewhere.

In closing, Mr. Atwood questions the "legality of removing public funded records from public use" and encourages all interested parties to take immediate action as the card file "is one of the best collections of its kind in the nation and should not be disrupted or destroyed."

**Aug. – Sept. 1978:**

Mr. Atwood's letter is published by several newspaper editors throughout the State of Vermont and Secretary of State James A. Guest responds by contacting various newspaper editors stating that the Mr. Atwood's letter "was wrong" and the Secretary of State's Office is "determined to keep [the card file] open to everyone both now and in future generations."

The Secretary of State's Office fields several letters from angry constituents and responds to each by sending a copy of the Secretary of State's letter to the editors. Examples of letters include:

*"...The index at your office should never be destroyed or put beyond the use of the public...I trust that I may hear that the writer of the letter was misinformed as to the intent of your department."* Manchester Town Clerk Clara May Hemenway, August 3, 1978

*"...If such [closure] was to be done it seems most un-American to those of us who are interested in our heritage..."* Helen R. Gadue, August 3, 1978

*"...Clearly, since taxpayers paid for the compilation of those public records over many years, the records should remain permanently available for public use... Continue to allow the public to use them, as you have always done."* Woodstock Historical Society, August 4, 1978

*"I am protesting the plan to retire the card files of vital statistics – births, marriages and death records – prior to 1870 that are in your office... to go to the various towns is very time consuming..."* Mrs. Norma C. Shortsleeve, August 4, 1978

*"I was appalled recently when I heard that you were trying to close off the vital statistics file at your office. When a decision as major as this is made, don't you think you should consult the 450,000 owners of the file – the residents of the State of Vermont. ... I suggest if you wish to stay in office, you best not turn a large group of voters – the ever growing genealogists of Vermont – against you."* Scott A. Bartley, August 23, 1978.

The Secretary of State's Office provides copies of its constituent responses to the Governor's Office per the request of John T. Gray, Governor Snelling's executive assistant.

**October 12, 1978:** Investigation into personnel matter between the Vital Records Clerk and Wallace reveals that Wallace feels Vital Records Clerk was source of inaccurate information being circulated by researchers and printed in letters to the editor.

**October 19, 1978:** Guest writes sends a letter to Howland Atwood saying that he has "been meaning to write to [Howland] for some time concerning [his] letters to the editors of several Vermont newspapers. Secretary of State Guest informs Mr. Howland that his letters have "incorrect" information and that the records will only be microfilmed to assure that they will be "accurate, complete, secure, and available to everyone."

**February 6, 1979:** Draft committee bill on the subject of "Vital Records" gives the sponsor's statement of purpose as follows:

*It is the purpose of this bill to reduce bureaucracy and promote efficiency by having the department of health file and preserve current vital records, by having the department of public records store and provide public access to the other vital records and by moving the licensing and registration division of the secretary of state's office to the space in the Pavilion Building now occupied by the vital records unit.*

Bill draft seeks to amend several existing vital records statutes by replacing "secretary of state" with "commissioner of health" and extend authority to certify vital records to the director of public records. Added language is to transfer positions, relocate licensing and registration division, and allow the commissioner of health to transmit original or photostatic copies of vital records returns to the director of public records is included.

**February 13, 1979:** Phoebe Morse, Deputy Commissioner of Health, sends internal memo to Guest regarding Secretary of State's proposed bill on vital records. In her memo, Morse cites "practical problems" that she wants to bring to Guest's attention, although she feels they can be easily resolved:

- 1) Transfer of “several employees” to either Department of Health or Public Records
- 2) Logistics as well as personnel rules when reassigning an existing employee to a new work location (the Department of Health is located in Burlington and not Montpelier)
- 3) Costs associated with the transfer of records, specifically moving, microfilming and rental space, and who would absorb the costs.

**March 12, 1979:**

Internal memo from Guest to Deputy Secretary of State Baldwin addressing concerns expressed by Walter Cooley (Department of Health Chief of Statistics) regarding adoptees. An increase in requests for birth records by those needing certified copies for Social Security purposes has resulted in a situation as those who have been adopted are finding there is no birth record on file from them at the town or local level. Both Cooley and Guest recognize many individuals do not know that they are adopted.

Guest proposes that the Secretary of State’s Office pursue of the following options, of which he favors 1 or 2 – but is more inclined follow option 2 if directed by the Legislature:

- 1) Do nothing;
- 2) Update the Office’s confidential lists and urge town clerks to refer individuals to the Secretary of State’s Office. Should the Office be contacted by someone who has been adopted, the Office will inform them that their record has been segregated and why; or
- 3) Prepare a complete confidential list, go to Probate Court and request that the court issue new birth certificates under the adoptees new name and have the new birth certificates filed at both the town level and at the Secretary of State’s Office.

Guest informs Baldwin that Cooley plans to get a senate amendment on the Health Department’s Vital Records bill, which is close to passing the House.<sup>3</sup>

**March 12, 1979:**

Guest contacts Esther Sorrell requesting that she do “whatever [she] can do to get the Vital Records transfer bill out of the committee,” emphasizing that it was “Sandy’s idea to make it a committee bill.”

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<sup>3</sup> It is unclear from the records, but it is possible that Guest was pondering what options the Secretary of State would do with adoption records – as late as March 1979 – because the Office thought or assumed that the Division of Public Records might be transferred from the Agency of Administration to the Secretary of State as Wallace recommended. This, however, did not occur in 1979. It was not until Act 96 of 2008 that the Division of Public Records was consolidated into the Secretary of State’s Office to create the current Vermont State Archives and Records Administration (VSARA) with the duties of the Public Records Director reassigned to the State Archivist.

**March 26, 1979:** H.396 (An Relating to Public Records Management) is amended by Senate Government Operations Committee to incorporate the aforementioned changes to vital records statutes. H.396 appears to be largely a housekeeping bill to clarify the director of public records' authority in the areas of agency/department records management programs, destruction of records, and related responsibilities and do minor language updates.

On the same day, Guest sends memo to James Douglas, Chairman of the House Government Operations Committee, stating that amendments to H.396 being considered by the Senate Government Operations Committee would "eliminate the duplication in the handling of vital records" that Guest raised to Douglas the previous January.

**April 2, 1979:** Workmen's compensation benefits claim filed against Secretary of State's Office by former Vital Records Section clerk.

**June 11, 1979:** As part of the implementation of Act 56 of 1979, the two existing Vital Records positions within the Office of the Secretary of State are transferred by Executive Order of the Governor to the Department of Health's Vital Statistics Division (Position #SE-6) and the Agency of Administration's Division of Public Records (Position #SE-7) following a decision of the Department of Personnel.

News releases leading up to the changes state:

*"On July 1, 1979, the responsibility for the Vermont vital records (birth, marriage, divorce, adoption, and death records) will be transferred from the Secretary of State's Office to two other agencies, the Division of Public Health Statistics in Burlington and the Division of Public Records in Montpelier."*

A two-step process is described with all adoption records and all vital records dating from 1955 to the present (1979) to the Division of Public Health Statistics by July 1<sup>st</sup>.

The transfer earlier records, dating 1760s to 1954, from the Secretary of State's Office to the Division of Public Records would be done by August 1<sup>st</sup>. The public is directed to contact the correct office based on the date of the record.

**June 28, 1979:** Keys to the adoption files and index are formally assigned to the Department of Health and the files and index are legally and physically removed from the custody of the Secretary of State and transferred to the legal and physical custody of the Department of Health.

**July 1, 1979:** Act 56 of 1979 goes into effect and vital records clerk officially retires from state employment.

**August 14, 1979:** Guest receives complaint from President of the Federation of Genealogical Societies that researchers are being advised by the Department of Health that birth, death and marriage records, dating 1955 and later, are no longer available for research.

Secretary of State's Office contacts Department of Health and notations show that Department is preparing forms to be filled out that would allow staff to pull records and provide them to researchers.

**August 21, 1979:** Guest responds to the president Federation of Genealogical Societies that he is "sorry to hear that the Health Department is not allowing genealogist access to the records, but the decision is theirs." He goes on to state that post-1955 records are only physically closed but will still be available by request. Handwritten notations by Secretary of State are as follows:

*"Protection of the records + operations of the office. They want to establish that they won't open for inspection. Walter Cooley says there's nothing saying the public can go in. They can go through them in the town clerks. Public Records is allowing now but would like make them unavailable if he had the staff. Extra protection. They (Health) plan to have genealogists fill out form + provide it genealogist for study. A copy would also be made if requested. As of now there's no charge for research fee if people come in but \$1 if they write in."*

Appears that Secretary of State asked for use statistics and attached show that there were 39 requests in January (17 for pre-1955, 22 for post); 61 in February (22 for pre-1955, 39 for post); 105 in March (40 for pre-1955, 65 for post); and 50 in April (16 for pre-1955, 34 for post). Note states that February and March coincided with tightening of Social Welfare Regulations requiring children of mothers on welfare to have a social security number (which in turn requires a birth certificate).

**April 25, 1980:** Hearing held on workmen's compensation benefits claim filed against Secretary of State's Office by former Vital Records Section clerk.

**June 20, 1980:** State Board on State Employees Benefits' denies former Vital Records Clerk's claim for workmen's compensation benefits.

**July 1, 1980:** Act 142 of 1980 (An Act to Modernize and Improve Laws Relating to Vital Records) is passed as what appears to be largely technical in nature.

**September 4, 1981:** Secretary of State James Douglas receives notice that the Vermont Supreme Court agreed with Secretary of State's position in the case regarding the workmen's compensation benefits claim filed against Secretary of State's Office by former Vital Records Section clerk