

**Testimony Before House Committee on Government Operations**

February 8, 2018

**Subject: Online Public Notice**

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**Note: I currently serve as the Associate Dean of Environmental Programs at Vermont Law School. The views expressed in this testimony are my own.**

Thank you for the opportunity to speak with you today. I am testifying in support of legislation to authorize the publication of state and municipal public notices in online news media as a means of satisfying public notice requirements.

I first worked in a governmental administrative agency in 1985 in the State of Texas, an agency called the Texas Water Commission. It is now called the Texas Commission on Environmental Quality and has a similar mission to the Vermont Department of Environmental Conservation. I recall being surprised by the small numbers of the public that commented on the permits and orders that the Commission issued, and also by the few people that requested or attended public hearings. I was just out of college and had an idealized concept of our democratic form of government. I was confused by the skepticism of my more experienced colleagues about the value of the public notice and comment process. My perception then, and confirmed over my decades of work in other public agencies at the federal and state level, in Texas, Washington and Vermont, is that the skepticism of these public servants regarding public participation was not borne of a disregard for public opinion, but of a perception that the public was not interested in the work of their agencies.

When I first moved to Vermont as a professor of law and director of the law school's environmental law clinic, I gained a different perspective on the issue of public notice. I worked with law students to represent citizen groups which were concerned about the decisions being made by Vermont's agencies, primarily the Agency of Agriculture, Food and Markets and the Agency of Natural Resources. These citizens' lives, health and homes were being impacted by the decisions of these agencies and felt that the staff at these agencies were not concerned about their interests or well-being. Even worse, many of these citizens felt that the decisions were being made secretly behind closed doors, in coordination with development interests. They had this perception because they frequently learned about decisions, whether changes to regulations, new permits, or enforcement orders, after the decisions had already been made.

I heard similar concerns from a broad array of Vermont citizens when I led the Department of Environmental Conservation from 2011 to 2015 and toured the state to get public input on the Department's priorities. And, ironically, I frequently heard from the business community that they were concerned that the department's staff were making decisions in concert with environmental advocacy groups. And in a concern that echoed what I heard from citizen groups – these business leaders expressed a concern that those decisions were being made secretly behind closed doors. I found this coalescence of opinion, and the general public's feeling of disconnectedness from the Department's decisions confusing and disconcerting. In a state as small as Vermont, in which we are practically all neighbors and acquaintances, and given our strong history and shared value in democratic process, it was and is remarkable that we have so many of our citizens feeling like their voice is not heard or valued.

As Commissioner, and as a consequence of my experiences, I resolved that the department would embrace the challenge of finding more effective ways to communicate and engage the regulated community, environmental advocacy groups, and the public at large. I cannot claim to have resolved that challenge while at the Department. I was, however, pleased that the Department staff took this effort seriously and began to work across multiple programs to streamline and improve the public notice, hearing and comment processes associated with the myriad of decisions made every day across many different programs. In every case where the Department staff undertook the difficult challenge of sifting through the various processes, including those involving public notice and comment, part of the solution involved the use of modern information technology.

One manifestation of their work, and an example of the power of new information technology tools, the Department recently launched an online environmental notice bulletin to make it easier for members of the public to access information in a timely manner. This new system makes it easier for more Vermonters to learn about the permitting decisions affecting their community so that they can engage in the public comment process. Providing more ways for people to get information about government decisions can only strengthen our democracy and I am pleased that my former department is actively using modern communication tools to that end.

The Vermont General Assembly can do even more to support and encourage, perhaps even require, our municipalities and state agencies to take advantage of modern electronic communications tools. As we settle into the 21<sup>st</sup> Century and a time of information overload, the question of how best to inform and engage the public becomes even more important, and in some ways, more difficult. Still, we have the ability to design new ways of communicating important public decisions that can help overcome this challenge. One immediate barrier that we can remove are limitations on the ability of public officials to engage and interact with those they serve – limitations which are contained in laws that were written before the internet fundamentally changed the way in which people receive information.

For instance, allowing Vermont public officials to post legal notices on online news outlets, where such electronic postings would be an effective way to reach the citizens affected by the notice, is an important step in ensuring that citizens can learn about decisions affecting them. Currently, the law is unclear. As a consequence, public officials worry that they can only meet the legal requirement by posting notices in print papers. We are lucky in Vermont that our news organizations are increasingly using online tools. VtDigger and The Chester Telegraph are two examples of news agencies which are succeeding in growing our access to news and information through our smartphones, pads, laptops and computers.

I hope that the Vermont legislature will update our laws and bring the state into the modern era of communications, give our public officials a clear choice about how best to engage our citizens and, in so doing, make it easier for all Vermonters to participate in decisions that affect them.