

Testimony on S.97
Martin Langeveld
Thursday, January 11, 2018

Thank you for this opportunity to testify on S.97, which would permit the publication of certain public notices on electronic media designated as newspapers of record.

I'm here in my capacity as a member of the board of New England Newspapers, Inc., which publishes the Bennington Banner, Brattleboro Reformer and Manchester Journal in Vermont, as well as the Berkshire Eagle in Pittsfield, Massachusetts. I was previously associated with that group of newspapers in various capacities over a 30-year period, and I currently serve on the board of the Vermont Press Association.

We should all be honest in this room: From the the point of view of newspapers, losing some of the revenue from public notices would certainly create a financial problem and potentially result in lost jobs. From the point of view of online media, gaining public notice revenue would certainly be a plus and help to stabilize their business. And from the point of view of state and municipal entities, and law offices, saving some money on public notice publication would be a good thing. But from the point of view of the legislators here, this is not a decision that should be made on financial considerations; it should be made based on the reasons public notices exist in the first place, which are maximum openness, maximum transparency, wide accessibility and permanent archivability. And those reasons say that online-only public notices are a bad idea. It's not surprising that *no other state* has implemented legislation that would permit online-only public notices of any kind.

I testified at the previous hearing on this issue last year in March, so rather than repeating that testimony I would like to just summarize it and then make a few other points regarding the possibility of having the state's newspapers implement a statewide website and repository for public notices.

So here are my bullet points from last time as a reminder:

1. *Permanence*: Time and time again over the last 15 years, legislators across the country have rejected proposals for online-only public notices. They have done this because *only* a printed record provides the kind of incontrovertible, arms-length, auditable, permanent record that public notices require.

2. *Openness and Transparency*: There are some 200 public notice requirements in the Vermont statutes. Public notice was required in all these instances for purposes of openness and transparency on the part of government entities as well as private parties. The principle is the public's right to know. And that right requires not only publication, but also that there be a permanent record. Therefore legislators required newspaper publication, rather than, say, nailing notices to a tree, or having the town crier announce them in the public square. Printed newspapers are

archived. If the question arises *whether* a notice was published, and *when* it was published, and *what* the precise wording of that notice was, because with third-party publishers and archives, an incontrovertible record exists. In contrast, website publication would be inherently ephemeral.

3. The mechanics of the bill are problematic. This bill provides for the Secretary of State to designate certain websites as newspapers of record. It should be noted that the Secretary of State does not currently designate printed newspapers as newspapers of record. How is the Secretary of State supposed to select websites as papers of record?

4. That brings us to the ephemeral and mutable nature of websites. Even if the Secretary of State could somehow select a set of qualifying websites, all of those websites would be ephemeral in nature. Web sites, no matter who operates them, are subject to hacking, tinkering, retroactive content changes, outages, and complete disappearances. Websites come and go. They go out of business, or the businesses that operate them decide to kill them or change them. The ones that endure longer, because they are financially successful, don't necessarily keep all their old content up forever. Websites can be hacked — often without anybody realizing it. Hackers can alter or delete website content. So online public notices could disappear, and they could be altered retroactively.

5. Archivability. The fact of publication on a certain date, with certain content, which remains archived and auditable in the case of printed newspapers, can not be reliably verified for websites. Having a printout of the web page, which this bill requires the state and its political subdivisions to maintain, does not create an independent third-party record of the kind that newspapers and newspaper archives at libraries provide.

6. Another issue is the question of reach and accessibility. Based on survey data, if you publish a public notice in a printed newspaper in a particular region in Vermont, you can be pretty sure that at least half the population in that area at least scans the page of the newspaper it appears on. That's important, because the value of a public notice is not just in placing the notice on the record, it is in its wide publication, availability and readership. This can not be said about websites — on the Web, people's interest are fickle and fleeting. The average time spent on most websites is measured in seconds. Even if people visit a Vermont website for news, they probably would not scan the public notices unless those notices were on the front page. So online-only publication would serve to hide notices from most of the population, which is contrary to the need for public notices to be seen widely and read widely.

Now, all of this is not to suggest that there isn't *some* value in having public notices online. In fact, nearly every newspaper in Vermont already publishes public notices on their website, in addition to the printed paper. But the ideal solution for online public notices is already in place in 42 states. In those 42 states, the state newspaper

association operates a central online repository for public notices. All, or nearly all, of the newspapers in those states publish their public notices on the site; they are searchable by location or by keyword, and they are archived there permanently. A single online destination aggregating all the public notices in a state combines enhanced accessibility with the permanence, transparency and readability of print. A nearby example can be found at [MassPublic Notices.org](http://MassPublicNotices.org).

A centralized, digital archive of public notices, operated by a third party, the newspapers of Vermont — would be a much better solution for Vermont than to become the first and only state permitting public notices to be published not in print but on essentially random "news" sites to be selected by a process that's undefined. Let's move in that direction, and let's not be the first state to permit only-only public notices.