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825 GREAT NORTHERN BOULEVARD, SUITE 202 • HELENA, MT 59601 • (406) 443-2850
FAX (406) 443-2860 • TOLL FREE IN MONTANA (800) 325-8276 • E-MAIL: MTNEWS@MTNEWSPAPERS.COM

JOHN M. BARROWS
EXECUTIVE DIRECTOR

January 21, 2011

Sen. John Sonju, Chairman
Members
Senate Local Government Committee

Opponent Testimony on SB 150, Sen. Art Wittich

Senators,

My name is John Barrows. I am the Executive Director of the Montana Newspaper Association, which represents Montana's 88 daily and weekly newspapers.

Senate Bill 150 has the admirable goal of making it easier to enforce a person's Constitutional Rights.

Unfortunately, sometimes, in attempting to enforce those rights, the bill actually diminishes already existing remedies.

As a whole, the bill appears gives a basic immunity to agencies of government, and instead, restricts any recovery to the individual actually making the decision that might be found to have actually committed the action that would violate a person's constitutional right.

Even if that person is actually following the dictates of the government entity, it would appear any remedies would come from the individual, and not from the Agency, whose policy he or she might be following.

SB 150 would specifically prohibit the entity from paying for that person's defense or any damages awarded against the public official., although there is a section that provides for immunization, defense and indemnification of employees and public officers if they are within the cope and course of their employment, in noncriminal actions.

The definition of a public official, as given in Section 1, Subsection 12, on page of the Bill, seems to cover virtually all employees of an entity, even one following the policy of the entity or

of the chief official of that entity. It seems mystifying that this would even include federal and foreign employees that would not seem to be covered, necessarily under our State Constitution.

However, payment of any award, or attorney fees if the court finds in favor of the plaintiff, are still allocated against the employee, even if the entity winds up paying them

There are several areas of particular concern to us, and to the public, concerning the Montana Constitutional Right of Participation; the Freedom of Speech, Expression and Press; the Montana Right to Know and the Montana Right to Privacy.

In these areas, there are already established methods of dealing with these rights, particularly within the areas of Right to Know and Privacy.

Section 2-3-221 MCA annotated, provides for court costs and attorney fees in Right to Know cases to Plaintiff trying to enforce his rights under Article II, Section 9 of the Montana Constitution.

There is no provision for the defendant to receive costs and fees under this law, but under SB 150 the prevailing party would receive costs and fees, and ask for damages. And under Section 2, Subsection 12, of SB150, the bill would take precedence over what is already a long-standing procedure that has been proven effective in assuring the Right to Know continues to be a valuable right for citizens.

This would have a major chilling effect on enforcing this important right.... One that has been used extensively through its years of existence since the Montana Constitutional Convention defined this right and the other three that help define the citizen's relationship to his or her government.

For these reasons, we respectfully request that SB150, as written, is not passed.

Sincerely,

John Barrows, Executive Director
Montana Newspaper Association