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**Ohio House Government Accountability & Oversight Committee
Testimony of Dennis Hetzel, President & Executive Director
Ohio News Media Association
House Bill 8 – Records Exemption
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Chairman Blessing, Ranking Minority Member Clyde and other committee members, thank you for this opportunity to testify today to share our concerns about House Bill 8. As president and executive director of the Ohio News Media Association, I represent the great majority of Ohio's newspapers and affiliated websites.

I'm also speaking today on behalf of our colleagues at the Ohio Association of Broadcasters. As a companion to this testimony, we ask you to read the written testimony submitted by attorney John C. Greiner of Cincinnati. Jack is one of our state's leading media-law experts and is addressing issues in the bill from an attorney's perspective.

We recognize that this legislation is very well-intentioned. The sponsors and their staffs have been gracious with their time and open to our concerns, so my intent today is to disagree without being disagreeable.

That's because most of my members are parents, too. My wife and I raised three children, and I understand the concern any parent would have in the situations Rep. Hambley, Rep. Rezabek and others have outlined in their testimony. No one would choose to have their child involved in a bus accident and then deal with the extra stress that can be added when reporters, lawyers, doctors and others may come calling, though it must be stated that there also numerous situations in which news coverage, lawyers and doctors help families cope. We also understand the fears parents have of identity theft or pedophiles stalking their kids.

We will address this by first talking about the role of journalists before discussing the role of the schools and then the parental concerns about access to these records. Our overriding goal today is to ask you to weigh the importance of this information for professional news gathering vs. the understandable but speculative concerns you have heard.

The role of the news media

Specific, credible, accurate information is critical to the practice of the kind of journalism that citizens have a right to expect. Incident and accident reports are foundational documents. Ohio's news media outlets need access to specific information to carry out their roles. Few stories are of more local interest in any community than ones involving school-bus accidents.

A misunderstood aspect of journalism is that the information-gathering process and the act of publishing, broadcasting or posting are two different things. Reporters examine a lot of information. They sift and winnow. Then they distill it all into a meaningful report. Every newsroom I managed, and all responsible media outlets, know the appropriate ways to handle stories involving young accident victims. We know that elementary and middle-school students are not miniature adults. However, it is necessary at times to know the names in order to reach the families and request interviews. If families decline, reporters move on. Meanwhile, the community is entitled to specific, credible information about the incident. Times may change, but good journalism still is about “who, what, when, where, why and how.”

The starkest example in recent months happened in Chattanooga, Tennessee, where a bus driver has been indicted on six counts of manslaughter related to alleged speeding and use of a cell phone. On Nov. 21 last year, his bus swerved into a tree with 37 elementary school students aboard, killing six and injuring others. The driver and the bus company face more than a dozen lawsuits. Grieving parents and students spoke openly to the news media in the aftermath, with some noting that they had been complaining about the driver but calls weren't returned.

Rep. Hambley's testimony that there were more than 1,500 school bus accidents in Ohio during 2014 and 2015 suggested to me as a former editor that there should be more reporting, not less, about school-bus accidents. Again, good journalism requires access to information. Journalists also know that it's not enough to cite government statistics. Meaningful stories must be about real people to help citizens understand what's at stake.

The news media has another historic role that keeps growing in importance – and that is to debunk rumors and provide credible information. The most accurate, authoritative information in these situations comes from law enforcement. The reality in most cases is that names fly rapidly into social media. Often, much of this is incorrect. The children themselves will be texting, tweeting and using other social media tools before the police even arrive in many cases. Neighborhood Facebook pages likely will be filled with information, discussion and speculation from amateur Web posters that may or may not be true. It is impossible to keep such information “quiet” in these times. Journalists can help ensure that accurate information is available.

There also is a larger point. Ohio has a fundamentally sound open records law that suffers today from ever-expanding secrecy. We are up to exemption “ff” in 149.43 (our open records law) with many more scattered throughout the Code. If pending language in HB 8 as well as the budget bill, HB 49, become law, we'll be up to “ii” or even “jj” soon. This particular bill concerns us greatly because it has a “camel's nose” potential to undermine a long-settled point of Ohio law that initial incident reports created by law enforcement are open records.

I hope we all agree that in our open records laws, exemptions should be rare and, when they are needed, written as narrowly as possible. There should be documentation or actual evidence of a problem, as well as an exploration of other alternatives, before we create new exemptions. If all that is required is a preference that certain information not be released, we are in trouble. Accountability and transparency gets lost. Accuracy and precision in reporting suffers.

The role of the schools

In preparing this testimony, I discussed HB 8 with several attorneys, including one of the country's leading experts on student privacy and related issues – Frank LoMonte, executive director of the Student Press Law Center in Washington D.C. Frank is an attorney whose articles about First Amendment and media-law topics have been widely published in Education Week, the Chronicle of Higher Education, the American University Law Review and other outlets. In particular, we discussed the “in loco parentis” doctrine as well as a related matter that has been mentioned -- the application of FERPA, the federal Family Education Rights and Privacy Act.

According to legal experts we have consulted, there is no nexus with the “in loco parentis” doctrine and public records laws here. The primary purpose of “in loco parentis” is really quite narrow – giving schools the right to act in place of the parents in situations such as health emergencies when the parents cannot be reached. It is not, to quote LoMonte, “a secrecy or confidentiality doctrine.” There are other cases and statutes that demonstrate that schools cannot somehow claim general, over-arching authority to act as substitutes with full parental authority in all cases. The use of corporal punishment is one example.

This is obvious in the context of a school-bus accident. If there is any chance that the school district or its driver is at fault or might have contributed in any way to the accident, the school district has an immediate conflict-of-interest situation in balancing the need for transparency and accountability versus potential liability.

FERPA also is frequently misinterpreted. FERPA's clear intent is to protect release of educational records. It was amended in 1992 to explicitly state that records maintained by law enforcement agencies are not educational records, including accident reports. FERPA also allows the schools to release basic identifying information of students, and you can see this demonstrated just by looking at any number of school district websites.

The following is from the FAQ that can be found at this link on the FERPA website:
(<http://familypolicy.ed.gov/faq-page?src=ferpa>):

Law enforcement unit records are not protected by FERPA because they are specifically excluded from the definition of “education records” and thus, from the privacy protections afforded to parents and eligible students by FERPA. Therefore, investigative reports and other records created and maintained by these law enforcement units that meet this definition are not considered “education records” subject to FERPA.

Accordingly, under FERPA, schools may disclose information from law enforcement unit records to anyone, including outside law enforcement authorities, without consent from parents or eligible students.

Therefore, once law enforcement is involved, their statutory requirements under the Ohio open records law are the factors in whether there is disclosure. In short, neither the “in loco parentis” doctrine nor FERPA are germane to this discussion.

Identity theft and pedophiles

Finally, we recognize it's important to address the concerns related to identity thieves and pedophiles having access to this information. While even one incident offends any moral person, it is not hard to understand why such abuse of public records is isolated and rare at worst.

In the physical world, identity thieves and pedophiles have other information sources and can target victims without showing themselves at government offices. I'm sure I'm not the only person in this room who has had credit card information stolen by a gas-pump skimmer. Perhaps you have been the victim of a "shoulder surfer" who obtained your PIN number at an ATM or a thief who stole mail from your mailbox.

While it is feasible bad people can find basic information in Web-available public records without revealing themselves, they have far-more likely sources there as well – starting with social media outlets where parents and kids routinely reveal identifying information.

Experts say that when pedophiles use the Internet, they will most likely make use of social media, publicly available profiles, chat rooms, instant messaging and even email. It is also worth noting that most predators do not target random children but go through an elaborate process of identifying and grooming. Digital identity thieves commonly get information through hacking and phishing techniques as well as GPS tracking and social media profiles. Anyone who has typed a name into Google knows there is ready access to lists created by legal and dubious means for pennies a name. Meanwhile, millions of Americans have voluntarily surrendered their privacy in order to utilize the Web for shopping, socializing and information. That also has the downside of making personal information vulnerable to attack. HB 8 cannot and will not solve these problems, but it will block legitimate, appropriate use of information.

So, the question becomes, is there is a compelling, fact-based rationale to create yet another exemption to overturn settled law and the strong presumption of openness that must attach to public records in Ohio? We believe that House Bill 8, despite its good intentions, fails this test decisively and should not become law.

Thank you for your consideration, and I would be glad to answer any questions that committee members may have.

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