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**Ohio Senate Government Oversight and Reform Committee
House Bill 139—Public Records Disclosure Exemptions
Testimony of Dennis R. Hetzel
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Chairman Coley, Vice Chair Uecker, Ranking Member Schiavoni, and members of the Senate Government Oversight and Reform Committee, thank you for the opportunity to provide testimony today on House Bill 139 on behalf of the members of the Ohio News Media Association. We are pleased to support the bill with one important caveat we will discuss in a moment.

HB 139 is a needed improvement to Ohio's public records law that would allow certain records to be made available to the public after 100 years. These are records that are currently exempt from disclosure but are required to be permanently retained by a governmental entity. It's interesting to note that even this standard is more restrictive than many federal records including census information and files created by intelligence agencies, which is evidence that the bill could be improved with no real concerns by shortening the 100-year period. Census records, for example, are open after 72 years. Records maintained by the CIA and other intelligence agencies are kept confidential for 25 years and then are reviewed and many are made public – as was the case last year regarding the JFK assassination some 54 years after the event. Many other records held by the federal government that are exempt from disclosure are available after 50 years. Information cannot remain classified indefinitely.

HB 139 would bring uniformity to practices across Ohio and would allow historians, researchers, journalists, archivists and everyday citizens to access records critical to their personal histories, family histories and the histories of their communities and our state. This bill is consistent with the strong presumption of openness that is attached to all public records under Ohio law.

We conducted some spot checks and found other states have adopted similar provisions with shorter time frames. For example, the default period for access in Kentucky is 50 years for those records in the custody of libraries and archives. Oregon has a 25-year standard that goes up to 75 years in some situations. Indiana also has a 75-year standard.

Lessening the standard from 100 years to 50 or 75 years would bring us closer in line to neighboring states and federal law. Also, HB 139 currently exempts records exempted under the attorney-client privilege and trial preparation provisions in Ohio's public records law. When we are considering time frames of this magnitude, it is hard to imagine the necessity to keep these records secret. Quite the opposite is likely to be true: In the context of research, it is easy to imagine circumstances in which historians' access to these records would be critical to understanding an important case or public-policy decision. Provisions could be adopted allowing for an appeal to extend the secrecy of such records.

Those are refinements. The bill also has a serious problem. We urge you to adopt an amendment to remove language found in Line 90 of the bill that creates a concerning and confusing possible expansion of an existing public records law exemption. Under current law, any records that are required to be kept secret under state or federal law are exempt from the public records law. We call this the 'catch-all' exemption as it is a broad and effective way to capture records exemptions found outside of section 149.43 of the Revised Code as well as any exemptions contained in federal code. HB 139 adds the phrase "or by the law under which the public office functions" to this exemption.

Why is this a concern? At best, this is ambiguous and an invitation to governmental bodies to seek new loopholes. Our legal analysis is that this phrase could lead an Ohio governmental body to write internal policies to close access to records that the Legislature has determined should be open under the Revised Code. This added language change has nothing to do with the underlying intent of HB 139 and, based on our conversations with the bill sponsors and proponents, was not included in the bill at the request of its supporters. The removal of this sentence would not diminish the intent of HB 139, but it would ensure that an already broad exemption to Ohio's public records law is not expanded further.

Finally, I'd like to add a personal note. I am a 66-year-old adoptee. Although I know some of the answers to my questions, there remains holes in my life story and the history my children and their children are entitled to know. Since I was born and raised in the Chicago area, this bill would not help me or my family personally, but I join other adoptees in my ability to relate to testimony from the bill's sponsors about the importance of this change to help families find answers and get closure.

Thank you for your consideration. Again, we believe it is critical to eliminate the provision at Line 90. If that is done, we join in strong support of the intent of HB 139.