



OHIO NEWS MEDIA ASSOCIATION | 1335 DUBLIN ROAD, SUITE 216-B | COLUMBUS OH 43215  
DENNIS R. HETZEL, PRESIDENT & EXECUTIVE DIRECTOR

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The Ohio News Media Association is pleased to share our 2019 legislative priorities document for your consideration. Our “top four” items are below. You’ll find more information on those items and others on the following pages. As always, we invite your ideas, questions, comments and opportunities to discuss.

### 1. Support the Ohio Citizen Participation Act.

We urge protection of basic constitutional rights through a fair, expedited process to deal with lawsuits that attack the legitimate expression of free-speech rights by Ohio citizens. Our proposal that was introduced by Sen. Matt Huffman in the prior session as SB 206 was hailed by both conservative and liberal groups as the new “gold standard” of such laws.

### 2. Improve Ohio’s open meetings law.

Ohio citizens need common-sense updates to our public meetings requirements. First, we can make open meetings disputes part of the successful process in the Ohio Court of Claims to appeal denials of public records requests. Second, follow the practice of many other states to keep “information-gathering” meetings open. Third, require public officials to keep some type of record of their executive session discussions.

### 3. Public records: Update the definition; limit exceptions.

The ever-growing list of exemptions to our public records law undermines its intent. Many exemptions are unneeded, poorly written or duplicitous. The definition of what constitutes a “public record” badly needs an update.

### 4. Yes, public notices (still) belong in newspapers.

Local newspapers remain the place where Ohio citizens want and expect the notices that inform them. ONMA members ensure that notices are widely distributed. We’re committed to reliable service and fair rates. All notices go online at ZERO cost to taxpayers on both local newspaper sites and [www.PublicNoticesOhio.com](http://www.PublicNoticesOhio.com), the ONMA’s easy-to-use statewide website, which posts an average of 150,000 Ohio notices per year.

Best regards on behalf of our more than 300 newspapers and local news websites,

*Dennis Hetzel*  
*President & Executive Director*

*Monica Nieporte*  
*Incoming President & Executive Director*

# OHIO NEWS MEDIA ASSOCIATION

## 2019 LEGISLATIVE PRIORITIES

The Ohio News Media Association (ONMA) was founded in 1933 as the Ohio Newspaper Association. We represent local news organizations throughout Ohio, including more than 300 daily and weekly newspapers and local news websites. We welcome dialogue on issues important to our industry, the communities we serve and the citizens of Ohio.

### 1. Ohio's 'sunshine laws' need improvements.

*Ohio's public officials often look to us for leadership on legislation involving open government and transparency. It's a responsibility we take very seriously.*

**Ohio Citizen Participation Act:** The ONMA is working with its coalition partners -- everyone from other media organizations to anti-domestic violence groups -- to pass a national model "anti-SLAPP" law that creates a rational, expedited court process to protect anyone who is dragged into costly, time-consuming litigation for expression of their First Amendment rights. In 2018, we strongly supported SB 206, introduced by Sen. Matt Huffman, and welcomed the chance to present initial testimony. We urge re-introduction and passage during the 133<sup>rd</sup> General Assembly.

**Open meetings law improvements:** The ONMA supports three specific improvements in the open meetings law.

1. Today the only way for a citizen to deal with an apparent violation of the law is to initiate an expensive, time-consuming court proceeding. The 2-year-old process in the Ohio Court of Claims has exceeded beyond expectations as a path to manage appeals of open records denials. It has leveled the playing field and statistics show fewer mandamus actions, reducing the burden on the courts. Citizens can appeal with an online form and \$25. The same process could be applied to disputes with public meetings such as executive session violations, notice issues or voting procedures.
2. The most important time for citizens to have an impact and be well-informed on important issues is early -- before the vote is all but decided. For that reason, "information-gathering" and "fact-finding" sessions are presumed open to the public in many states, but not in Ohio. Current Ohio law also puts public officials in the weird position of being unable to deliberate or even question presenters in such closed sessions without violating the law. It's not a good or even logical way to conduct public business.
3. We must accept the word of public officials that executive session discussions are strictly confined to the limits the law requires. It just makes sense to require some type of minutes or, better yet, a recording of the executive

session that would become discoverable in the event of litigation and would become a public record some years in the future.

**Body-worn cameras:** The ONMA supported the bill introduced by Reps. Antani and Craig (HB 425) that passed the last GA to balance privacy issues raised by police use of the cameras with the need for openness, transparency and accountability. We still have concerns about specific provisions and believe implementation of this new law must be closely monitored to ensure it's working as intended.

**“Death by a thousand cuts” on transparency:** We're up to exemption “hh” in our open records law (ORC 149.43). That's 34 enumerated exceptions with many more proposed. Proposals to make more records secret and close more meetings to the public inevitably outnumber ideas to improve access. New statutory language may be needed to stop abuse of the often-abused exemptions based on “overly broad” requests and attorney-client privilege. Any proposals to add new secrecy should be evidence-based and written narrowly to preserve the strong presumption of openness that attaches to Ohio's laws on public records and public meetings.

**Eliminate the ‘stealth exemption’:** Section 149.011 of the Revised Code defines public records. Something can't be an open record if it isn't first a public record, and courts have interpreted this narrowly, relying on difficult, outmoded language. A public record must “serve to document” the activities of the office. The weird, vague word “document” has spurred legal battles and bad decisions. Language also must be brought in line with the digital age. ONMA offers a model definition to fix this: “Any recorded information kept by or on behalf of a public office, or under color of a public office, on any medium” should be presumed to be a public record.

**Tougher penalties; mandatory fees:** Many states have requirements that reasonable attorney fees are mandatory to plaintiffs that prevail in fully litigated open meetings and open records cases. This underscores the importance of open government. Ohio's penalty provisions are very weak, and attorney fees are rarely awarded. We urge legislators to toughen penalties and consider mandatory attorney fee awards, at least in the most egregious situations.

**Amendment to Court of Claims process:** The new “court of claims process” for appeals of open records denials is working well and leveling the playing field for citizens. However, legislators should remove phrases added to attorney fee provisions that prohibit the court from conducting discovery on the question of awarding fees to the winning plaintiff in a records case. Note that the government can do discovery on whether the litigation was frivolous. This isn't fair.

**Student journalist rights:** ONMA supports model legislation to protect the First Amendment rights of student journalists and faculty advisors while still allowing appropriate oversight by school officials consistent with the law.

**Media literacy:** In a world in which basic, agreed-upon facts are attacked or dismissed and “fake news” spreads like a virus, ONMA encourages legislators to promote media literacy programs to encourage both children and adults to be smart consumers of media and use trusted sources for information.

**The home-rule loophole:** Many Ohio local governmental bodies have adopted home-rule forms of government. Ohio statutes permit these bodies to have greater secrecy and less transparency and accountability than state statutes allow in the areas of open records, open meetings and public notices. Open government always should be at least as open as state laws require.

## **2. Good journalism takes resources. Help us stay strong as businesses to best serve Ohio’s communities.**

*It’s no secret that the traditional media business model faces challenges – mostly because of the impact of the Internet not only on our industry but also our many local advertisers. We’re working to figure it out! Meanwhile, we urge legislators to oppose proposals that raise costs of doing business or unfairly limit our ability to compete. Financially strong media outlets are best able to serve their communities.*

**Sales tax expansion:** We join with our partners in the Ohio Service Industry Coalition to strongly oppose expansion of the Ohio sales tax to business services, including advertising. This would have a devastating impact as most advertisers would reduce spending by the amount of the sales tax – a potential revenue loss of 6-7 percent. This will hurt those local businesses as well. Multiple studies demonstrate that a sales tax on advertising causes job losses, reduction in consumer demand and, overall, will not serve the public policy justifications.

**Other taxation issues:** We support continued reform to Ohio’s complex municipal taxation system. We oppose any expansion of the CAT tax on gross revenues in an era in which the industry’s profit margins are under extreme pressure.

**Independent contractors:** We do not support changes in independent contractor status that would inappropriately classify contractors such as newspaper carriers and free-lance journalists as employees.

## **3. Public notices belong in print, and we ensure they reach digital readers at no additional cost to taxpayers.**

*Ohio newspapers know how to perform this important work for government clients and will continue to do so. Public (legal) notices have an important purpose that traces back to America’s founding. We strongly believe that notices should appear where citizens are most likely to see them. Newspapers remain the best and most*

*appropriate vehicle for governments to provide notices – a position supported by credible research in Ohio and across the country. Citizens want and expect notices in newspapers and believe this is an appropriate expenditure of funds.*

While the cost of notices is only a small fraction of overall expenses of a governmental body, we recognize and respect the need for public officials to manage costs while carrying out their statutory obligations to inform citizens. (Note that ONMA members have written many editorials to favor adequate funding for local government.) We have supported and initiated successful laws to ensure fair advertising pricing and respond to digital audiences. We support digital access to notices on the platforms that citizens regularly view – local newspaper websites and the popular statewide site, [PublicNoticesOhio.com](http://PublicNoticesOhio.com), which ONMA maintains at no cost to taxpayers and puts every newspaper notice in Ohio in one location on the Internet. This popular statewide site has posted nearly 1 million notices since 2015!

From time to time, there are suggestions to move public notices exclusively to government websites. This defeats the core purpose of notices for several reasons:

1. Most government websites have small audiences. Few citizens would think to go there for notices. There are thousands of government websites across Ohio.
2. The digital divide remains real, proven by government studies, especially in terms of access to information for thousands of lower-income, elderly and rural citizens of Ohio.
3. Removing print notices is penny-wise and pound-foolish, particularly in areas such as bidding, procurement, auctions and delinquent taxes. Imagine the frustration of bidders hunting across hundreds of sites for opportunities – if they know about them at all.
4. Consider how all of us approach print versus digital content. In a newspaper, there is a process of discovery as you thumb through the paper, including the public notices. (“Oh, I didn’t know the school district was having a special meeting.”) Most website behavior is highly targeted. You want what you want, and then you exit the site.
5. Many local government sites are ill-equipped to fulfill requirements and provide adequate display, security and verification of “publication.” These are critically important aspects of statutory responsibilities – and often will be new taxpayer expenses. Ohio newspapers have been providing this important service for more than a century and are best-equipped to continue to do so across both print and digital platforms.

**Contact information**

Dennis R. Hetzel  
President & Executive Director  
Ohio News Media Association  
Columbus OH 43215  
(o) 614-486-6677 | (c) 614-940-5067  
dhetzel@ohionews.org

Daniel J. Hurley  
Manager of Governmental Affairs  
Capitol Consulting Group  
Columbus OH  
(o) 614-224-3855 | (c) 937-224-3872  
dhurley@capitol-consulting.net