

FIVE GOOD REASONS TO OPPOSE H.B. 122

1. **H.B. 122 DESTROYS THE CAREFUL BALANCING OF VALUES THAT IS GRAMA.** GRAMA carefully balances two important values of a free society: the right of the public to know what its government is doing and the right of government to conduct public business effectively and efficiently. Since its enactment, GRAMA has allowed government officials, the State Records Committee, and the courts to balance these competing interests in determining whether a particular record should be public or not. H.B. 122 destroys that system of checks and balances by requiring the public to satisfy an impermissibly high “clear and convincing evidence” standard to obtain access to a wide swath of records involving governmental action of great interest to the public. This change would significantly damage the public’s right to know what its government is doing.
2. **H.B. 122 ALLOWS MORE GOVERNMENT SECRECY IN AN AREA PRONE TO ABUSE.** When government exercises its power to take the life, liberty or property of an individual, the need for public scrutiny is at its zenith. The public has a compelling interest in scrutinizing government action or inaction when it exercises such authority. H.B. 122 would significantly impair public scrutiny of such government action by requiring the public to clear an unjustifiably high hurdle before it could access government records in a wide variety of criminal, civil, and administrative investigations and proceedings, including audit, disciplinary, licensing, certification and registration matters. Because of the high stakes and the potential for abuse, this is an area of government action that deserves more light, not less.
3. **H.B. 122 UNDERMINES PUBLIC ACCOUNTABILITY IN GOVERNMENT.** Is it a problem if a local government appears to be turning a blind eye to one of its managers who is found to have regularly sexually harassed subordinate public employees? Is it a problem if the police chief is ignoring the recommendations of a civilian review board established by a mayor to enhance public trust in law enforcement by reviewing allegations of police brutality? Indeed, these are issues of great interest to a public that is entitled to know whether its government officials are abusing their powers. Both problems occurred recently in Utah. They only came to public light because of GRAMA requests. By requiring the public to prove by “clear and convincing evidence” that such records should be public, H.B. 122 makes it much more likely that records like these will never see the light of day. As a result, the public will have one less check on government and one less tool to hold government officials accountable for their official conduct.
4. **H.B. 122 IS A SOLUTION IN SEARCH OF A PROBLEM.** The government officials promoting H.B. 122 have offered shifting rationales for the bill. First, they said it was necessary to protect government records relating to attorney-client privilege and attorney work product. Then they said it was necessary to prevent disclosure of records that might interfere with on-going investigations. Finally, they said they are just receiving too many GRAMA requests. Here are the facts: GRAMA already contains exceptions for attorney-client privilege and attorney work product records. GRAMA already contains exceptions for records the disclosure of which would interfere with investigatory or enforcement proceedings, impair a fair process, or put lives in danger. And GRAMA already contains provisions allowing government to deny requests for non-public records or obtain more time to respond to multiple requests. The overreaching government secrecy authorized by H.B. 122 is not only bad public policy, it is a solution in search of a problem.
5. **GRAMA’S PUBLIC INTEREST BALANCING TEST HAS FUNCTIONED WELL FOR MORE THAN 18 YEARS.** Those who seek to make it easier to seal off government records from the public ought to at least be able to explain why such a measure is necessary. The proponents of H.B. 122 have utterly failed to demonstrate such necessity. At the House Committee hearing on H.B. 122, a Committee member asked the government official testifying in favor of the bill if he knew of any

examples where release of records had impaired a government investigation or caused harm. The government witness said he knew of *no such case*. Nor have the proponents of H.B. 122 been able to point to a *single example* where the public interest balancing test has been improperly applied to a GRAMA request. In fact, the public interest balancing test has functioned precisely as intended by the legislature since it enacted GRAMA 18 years ago. In cases where the public interest in nondisclosure of a record is non-existent or is outweighed by the public interests in disclosure, the record has been released. In cases where the interests favoring non-disclosure outweigh the interests in disclosure, the GRAMA request has been denied. Top governmental officials make the initial balancing decision. Their acts are reviewable by the State Records Committee and the courts, including ultimately the Utah Supreme Court. With so many checks and balances, GRAMA ensures that protected records are made public only when access truly serves the public interest. The statute works. If it ain't broke, don't fix it.

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