

CELEBRATING

10
YEARS
OF ADVOCACY
2006 - 2016

EXECUTIVE DIRECTOR
Justin Silverman, Esq.

OFFICERS

Thomas Fiedler
NEFAC President
Boston University
Mike Donoghue
First Vice President
Burlington Free Press (Vt., Formerly)
Robert A. Bertsche, Esq.
Treasurer
Prince Lobel Tye, LLP (Mass.)
Lynne DeLucia
Fundraising Chairwoman
Connecticut Health I-Team
David Rosen
Communications Chairman
David Rosen Communications (Mass.)

DIRECTORS

Jonathan P. Albano, Esq.
Morgan, Lewis & Bockius LLP (Mass.)
Dan Barrett
ACLU of Connecticut
Karen Bordeleau
Providence, R.I.
Dieter Bradbury
Portland Press Herald
Edward Cafasso
WinnCompanies (Mass.)
Peter Caruso, Sr., Esq.
Caruso & Caruso, LLP (Mass.)
William Chapman, Esq.
Orr & Reno (N.H.)
Linda Conway
New England Newspaper & Press Assoc.
Lia Ernst
ACLU of Vermont
Edward Fitzpatrick
Roger Williams University
Richard Gagliuso, Esq.
Gagliuso & Gagliuso (N.H.)
George Geers
Academy of New England Journalists
Daniel J. Klau
McElroy, Deutsch, Mulvaney & Carpenter (Conn.)
Amanda Milkovits
The Providence Journal
Maggie Mulvihill
Boston University
Jennifer Peter
The Boston Globe
Elizabeth Ritvo, Esq.
Brown Rudnick, LLP (Mass.)
Walter V. Robinson
The Boston Globe
Naomi Schalit
Maine Center for Public Interest Reporting
Sigmund D. Schutz, Esq.
Preti Flaherty (Maine)
James H. Smith
Connecticut Council on FOI
Todd Smith
Caledonian Record (Vt.)
Mike Stanton
University of Connecticut
Emily Sweeney
The Boston Globe
Gregory V. Sullivan, Esq.
Malloy & Sullivan (Mass.)
Tim White
WPRI-TV Providence
Terry Williams
The Keene Sentinel (N.H.)
Yohuru Williams
Fairfield University (Conn.)
Janet Wu
WCVB-TV Boston

*Affiliations appear for
identification purposes only.*



New England First Amendment Coalition

Phone 508.983.6006 Fax 617.860.2559 Web nefirstamendment.org
Twitter @FiveFreedoms Mailing Address 111 Milk Street, Westborough MA 01581

SENT VIA EMAIL

susan.pinette@legislature.maine.gov

Committee on Judiciary
Legislative Information Office
100 State House Station
Augusta, ME 04333
c/o Susan Pinette, Committee Clerk

April 24, 2017

Dear Committee on Judiciary Members,

On behalf of the New England First Amendment Coalition, we are writing in opposition to L.D. 1432, An Act to Implement the Recommendations of the Right to Know Advisory Committee Concerning Advance Payment of Costs for Public Records Requests.

NEFAC is a regional non-profit organization that advocates for First Amendment freedoms and the public's right to know. The coalition's educational mission focuses on freedom of information laws, such as the Maine Freedom of Access Act. If passed, L.D. 1432 will discourage public records requests under FOAA and cause unnecessary delay by state agencies and local municipalities. Worse, the law would violate the spirit of FOAA by making it more difficult for Maine citizens to monitor their government.

L.D. 1432 would allow a custodian to require advance payment for all costs of producing a record — no matter how small — before that record is provided. While this may seem like a practical way for agencies to recoup their costs and prevent non-payment of fees, there is already a sufficient safeguard for agency budgets: § 408-A (10). This provision of FOAA allows custodians to require advance payment for requests made by individuals who have previously failed to pay a fee or are requesting records that will cost more than \$100 to produce. Under § 408-A (10), advance payment can be required even before any time is expended on the search and retrieval process.

Left outside the scope of § 408-A (10) are less expensive, often small requests for routine documents that can be more easily produced. L.D. 1432 would allow these records to be withheld for the sake of the relatively low fees that could be collected in return. This would create a system ripe for obfuscation and needless delay. Consider the following scenarios:

- A request is made for arrest reports from the Maine State Police Department. Under the current law, these routine records must be released immediately as they are readily available and cost less than \$100 to produce. If L.D. 1432 were enacted, the department could withhold those reports indefinitely until the requester pays minimal copying costs.
- Those same arrest reports are requested through the mail. Under the current law, they are released immediately, often with an accompanying invoice for payment or for no charge at all. L.D. 1432 allows the department to instead wait for payment before releasing the records, adding several days to the exchange.
- A dispute arises between the requester and the department over the cost of producing those arrest reports. Rather than releasing the reports in expectation of future payment, the department instead uses the new law to withhold all documents until a court adjudicates the conflict and payment is made. The public interest in those reports meanwhile dissipates in the delay.

While L.D. 1432 allows excessive delay and burdens the requester with immediate payment for routine documents, it also conflicts with the principles of FOAA. The intent of FOAA is to open government records to public view so Maine residents can better oversee the work being done on their behalf. The law should facilitate the flow of information not allow basic low-cost record requests to bottleneck while payment is pending. Whatever financial savings may occur with the passage of L.D. 1432 will ultimately come at a greater cost to the public's right to know.

Respectfully, we ask you to oppose L.D. 1432. Thank you for the opportunity to provide this testimony.

Sincerely,

Sigmund D. Schutz, Esq.
Preti Flaherty, NEFAC Board Member

Justin Silverman, Esq.
NEFAC Executive Director



2017 MAJOR SUPPORTERS

The Boston Globe

PJF THE PROVIDENCE JOURNAL
Charitable Legacy Fund



The Robertson Foundation Lois Howe McClure

CELEBRATION SUPPORTERS



Hartford  Courant