



Feb. 4, 2025

Chair Kropf and Members of the Committee,

The Oregon Society of Professional Journalists appreciates the opportunity to express our opposition to HB 2533 as written.

Judges in Oregon, district attorneys and plaintiffs' lawyers have repeatedly found that attorney client privilege is abused by government agencies to cover up wrongdoing in ways that ill-serve the public, such as concealing unconstitutional conditions in jails

With their attorneys' blessings, agencies in Oregon have explicitly copied lawyers on non-privileged records, or invited lawyers into non-privileged meetings to facilitate abuse of the privilege, only to be called out for it. The practice "eviscerates" Oregon's transparency laws, one Marion Circuit Judge ruled in 2017.

This bill would make that situation worse, guaranteeing a lifetime's worth of secrecy around potential malfeasance or worse. Not only is sunlight still the best disinfectant, but our democratic society relies on an informed populace that is empowered by knowledge of the government and the world around it.

In 1979, the Oregon Legislature passed the law requiring that the attorney-client privilege exemption shielding some public records from disclosure expire after 25 years. The effect of the statute was "unambiguous," as the Multnomah District Attorney ruled in 2016. And while government attorneys then claimed that effect was not lawmakers' intent, the Oregon Supreme Court in 2021 cited the legislative history to resoundingly reject that argument, saying the legislative history "undercut" and "undermined" the government attorneys' position.

“Most of those arguments are unsupported by, or contrary to the intent reflected in, the words the legislature used,” held the ruling in *City of Portland v Mark Bartlett*.

The expiration date on public records exemptions provides Oregonians with important transparency around decisions that may continue to affect them today — which is precisely why Bartlett had sued Portland in that case. He felt the records would show how the city was violating the law.

If that past is prologue, SPJ is concerned that the origin of this bill may again relate to an effort by government attorneys to prevent liability or from malfeasance from becoming public, as when Portland tried to circumvent the Bartlett case by persuading lawmakers in 2021 the 25-year statute was not lawmakers’ intent.

SPJ is concerned that by extending government attorney-client secrecy beyond 25 years, past abuses of the privilege by government attorneys could be effectively enshrined and closed off forever—thus forestalling accountability and deterrence, and blocking disclosure of information that affects Oregonians’ lives.

Respectfully yours,

Nick Budnick, board member, Sunshine Chair of the Oregon Society of Professional Journalists.