

Senate Bill 2047
House Judiciary Committee
Testimony Presented by Sara Behrens
March 1, 2023

Good morning Chair Klemin, members of the committee. My name is Sara Behrens and I am a staff attorney with the State Court Administrator's Office. I am here today in support of Senate Bill 2047.

Senate Bill 2047 simply excludes from the definition of meeting under the open meetings law, meetings of judicial committees and workgroups. This codifies the current understanding of the Judicial Branch and is supported by North Dakota Attorney General Opinion 2005-O-19. As stated in that opinion, nothing in the legislative history of the open meetings law indicates that it was meant to apply to the judicial branch. The Attorney General further explained that separation of powers would likely prevent the open meetings law from being applied to the judicial branch.

While there are Attorney General Opinions applying the open meetings law to the State Board of Law Examiners and the Judicial Conference, those were distinguished because they were creations of the Legislature and were found to fall under the definition of "public entity" which includes an entity created by state statute.

We wish to make it clear that the meetings of committees, workgroups, and other groups created by the Judicial Branch are not subject to the open meetings law. Instead, judicial branch meetings are subject to section 5 of Article XI of the North Dakota Constitution. The Supreme Court can then determine if it believes any meetings should be closed and create court rules to govern. There is already a corresponding exclusion under the definition of "record" to make

clear that judicial branch records are not subject to the open records law. Instead, whether judicial branch records are open is governed by court rule.

We thank you for your consideration and urge a do pass.