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THE FINAL WORD

LaFaive: Prop 2 would restrict access to information

By Michael LaFaive

Proposal 2 on the Nov. 6 Michigan ballot is a measure its union backers call the “Protect Working Families Amendment.” If adopted, this would primarily impact laws overseeing contracts between public bodies and government employee unions, effectively making every contract negotiation its own constitutional convention and retroactively trumping laws passed by the Legislature and signed by the governor.

Among other consequences, the initiative could restrict access by the public and the media to information about government’s inner workings by effectively gutting Michigan’s Freedom of Information Act. FOIA guarantees that the public has the right to view or get copies of public documents, albeit with a limited number of exceptions. It is a powerful tool that has helped journalists and private citizens uncover wrongdoing, expose waste and abuse and otherwise help pull back the curtain on government operations.

Under Prop 2, nothing would prevent state or local government officials from signing a union labor contract that prohibits disclosing information otherwise protected by FOIA. They could even make the collective bargaining agreement itself subject to government secrecy, and the Legislature would be helpless to halt the process. While some may question whether government employee unions would work to prevent the release of government documents, there’s evidence to suggest they would.

In 2007, citizen journalist Chetly Zarko requested communications created during a three-month period by three high school teachers in Livingston County who were also high-ranking union officials. The request

asked for thousands of union-related messages sent from school computers and email accounts.

The Howell Education Association, an arm of the statewide MEA teachers union, filed a lawsuit to prevent release of the documents. The union ultimately won a Michigan Court of Appeals decision defining these communications as “personal” and not subject to FOIA. The [Mackinac Center Legal Foundation](#) and the Michigan Press Association filed a joint amicus brief arguing these were, in fact, public records (created with and on school property), and continue to believe the court’s decision was a bad one. Regardless, the case highlights the willingness of a government union to hide documents from the public.

The threat of losing even greater access to government documents should most directly chill members of Michigan’s media. Journalists rely on FOIA requests to uncover everything from waste and abuse to explicit wrongdoing.

Government officials themselves can also have a sometimes thorny relationship with open records laws. For example, even Gov. Rick Snyder — who campaigned on a platform of greater government transparency — recently vetoed legislation passed unanimously by the Legislature that required Internet posting of agreements made between different units of government, including ones a governor can make with other countries.

Gutting Michigan’s FOIA is just one example of the breathtaking scope of this government union power grab. Access to information that sheds sunlight on government actions may be just the first casualty in this constitutional war between public employee unions and the public.