



Prop 2 May Put FOIA on Ice for Media, Others

By Michael D. LaFaive

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Summary

Proposal 2 on the Nov. 6 ballot, which supporters called the "Protect Our Jobs" amendment, could severely limit the public's ability to file Freedom of Information requests and keep tabs on the inner workings of government.

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Proposal 2 on the Nov. 6 Michigan ballot 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 others 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 public inspection.

continued on back



Government transparency could be hampered if Proposal 2 passes.

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.

Given these tendencies, it is entirely possible that under Prop 2 government officials might be tempted to whisper invitations to union officials to request information-limiting contract provisions. Worse, such invitations might be accompanied by a quid pro quo benefiting the union and government employees at the expense of taxpayers and recipients of public services. Since ongoing contract talks by public bodies are already exempt from FOIA and open meetings laws, the public would be none-the-wiser to such discussions.

Gutting Michigan's FOIA is just one example of the breathtaking scope of this government union power grab. Many other laws leveling the playing field between taxpayers and tax spenders could also be at risk. 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. Proposal 2 could make discovering what government agencies and personnel are up to almost impossible.

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