

ACLU's Stealth Challenge To Michigan Right To Work...Could Open Meetings Act Lawsuit Sink Controversial Law?

June 11, 2013 | [Labor Agreements, Labor And Employment](#)



Keith J. Brodie
Partner

Michigan

While much of the initial fervor related to Michigan passing right to work legislation has subsided, a lawsuit that could collaterally challenge the law silently proceeds. [As we previously reported](#), a lawsuit was filed under Michigan's Open Meetings Act to challenge the process used by the Michigan's Legislature to pass the controversial legislation. In January, the ACLU stepped in to litigate on behalf of the groups challenging the law.

Recently, Michigan Radio's Political Analyst Jack Lessenberry [spoke to Dan Korobkin](#) who is the ACLU attorney in charge of the suit. According to Mr. Korobkin, the ACLU apparently has no problem with right to work legislation per se, but rather in this case is arguing the process by which the law was passed is both illegal and unconstitutional. The ACLU points to the fact that the Michigan Capitol building was closed to the public for some period of time during the voting for the right to work laws, allegedly due to safety reasons caused by the number of protestors who opposed the law. Mr. Korobkin also alleges that the Capitol galleries were deliberately packed with assistants to Republican officeholders to squeeze out the general public. The ACLU claims that these facts violate the Michigan's Open Meetings Act, which requires meetings of Michigan's "public bodies" (including the Legislature) to be "open to the public."

Challenges to right to work in other states have [proved unsuccessful in the past](#), but because this lawsuit challenges the procedural process by which the law was enacted, rather than the substance of the law itself, it may ultimately be more successful. Remedies for a violation of the Open Meetings Act include invalidating the law, but it is not required that such a remedy would be granted, even if a court finds that there were some violations of the Open Meetings Act. And if a law is invalidated under this process, it can be re-enacted by the Legislature, so the lawsuit may not stop right to work for long, even if it is able to have the law invalidated.

So far, Ingham County Circuit Court Judge William Collette has been [willing to let the lawsuit proceed](#), after denying the Michigan Attorney General's request to dismiss the case. It remains to be seen whether the case will ultimately have an affect on Michigan right to work legislation, but the unusual procedural situation surrounding Michigan's passage of right to work may ultimately be organized labor's best bet on overturning the law.

See all of our previous right to work [coverage here](#).

RELATED PRACTICE AREAS

Collective Bargaining
Labor and Employment
Labor Relations

RELATED TOPICS

ACLU
Open Meetings Act

