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MICHIGAN OPEN GOVERNMENT LAWS UNDERMINE ACCOUNTABILITY OF ELECTED OFFICIALS, STUDY FINDS

Michigan's 20 Loopholes to Public Information Disclosure Are 2nd Highest Among States Studied

(Lansing, Mich.) Michigan's constitutional officers, including the Governor and Lt. Governor, as well as state legislators and employees, are exempt from the state's public disclosure laws, according to a study released Wednesday by Common Cause of Michigan and the Citizen Advocacy Center in celebration of Sunshine Week (March 15-21).

"Transparency and scrutiny of our government's decisions by the public are fundamental building blocks for any healthy democracy, and unfortunately for all of us, too often our state laws allow our elected and appointed officials to avoid both," stated Frank Houston, Executive Director for Common Cause of Michigan, a non-partisan government reform advocacy organization.

The report issued by the Citizen Advocacy Center, a *non-profit, non-partisan community legal organization dedicated to building democracy through citizen participation*, expressed strong concerns about how FOIA works, and at times doesn't in Michigan.

Exemptions for the Michigan's constitutional officers are among 20 loopholes in Michigan law that entitles agencies to reject Freedom of Information Act (FOIA) requests with impunity. That total is second to Illinois and far ahead of Ohio, Wisconsin and Minnesota, the study found. Michigan is also one of two states that keep records pertaining to public education and internal operations private.

The report also found that while violators of the state's Open Meeting Act (OMA) are legally subject to criminal penalties, courts rarely impose those reprisals, allowing agencies to bar the public from meetings or retreat into a "closed sessions" without legal retribution.

"Michigan law grossly undermines citizens' rights to be informed about the actions of their elected officials and other employees who receive their hard earned taxpayer dollars," said Terry Pastika, Executive Director and Community Lawyer for the Citizen Advocacy Center. "Access to this information is fundamental to our democracy and open, transparent government."

In conducting the study on behalf of the Midwest Democracy Network, which is working on political reform across the region, the Citizen Advocacy Center reviewed each state's laws as well as more than 1,000 legal cases, attorney general opinions, and professional publications to produce a comprehensive study of each state's strengths and weaknesses. The Center also provided specific reform recommendations that good government advocates can use to advance changes within each state. Reforms range from changing how fees should be levied to implementing training programs for public officials.

The full report and state-by-state comparison charts are available online at www.citizenadvocacycenter.org or www.midwestdemocracynetwork.org.

The study found that efforts to obtain information from government agencies in Michigan are hampered by several factors including:

- **High costs imposed for disclosing public records.** Because Michigan charges for clerical labor, the state has the highest costs in the five-state region associated with FOIA documents. While there are exemptions for those with low income, costs for obtaining copies of documents can be excessive. The City of Detroit is also notorious for charging exorbitant fees for FOIA requests.
- **No state office to mediate disputes.** Unlike the other states analyzed, Michigan lacks an entity to help address OMA and FOIA violations.
- **Extraordinarily short deadline to file an OMA lawsuit.** Under certain circumstances, the statute of limitations to file an OMA lawsuit is as little as 30 days. This short deadline is a disincentive to the public to bring legal action against public bodies that violate this law.

To remedy these problems, Common Cause of Michigan and the Citizen Advocacy Center recommend that lawmakers reform Michigan FOIA and OMA laws to:

- Subject Constitutional officers, state legislators and state employees to FOIA coverage.
- Implement mandatory punitive fees for OMA violations and impose mandatory trainings for all public employees so they fully understand the law and how to implement it.
- Cap all costs FOIA fees to \$0.15 per page requested.
- Statutorily create an office that has investigative powers and enforcement capacity for FOIA and OMA violations.

The Center reviewed Michigan, Ohio, Illinois, Wisconsin and Minnesota's Freedom of Information and Open Meetings Acts and found striking similarities between all states, including:

- Open government laws are sporadically enforced, which means public bodies are more likely to be unresponsive to records requests and employ exemptions to keep meetings closed.
- No state surveyed has a government office with statutory authority specifically created to oversee and enforce the laws.

- State employees are not adequately trained to carry out open government policies and may be unintentionally violating the laws.
- Citizens may be able to attend meetings, but there are very few opportunities to participate.

“For our democracy to work, we must have laws that are effective for encouraging government transparency,” said Houston. “Without strong sunshine laws, the public can not fully participate in the democratic process, knowledgeably discuss issues of public concern, make informed judgments about or trust the actions of elected officials.”

The study, conducted by the Center and funded by the Joyce Foundation, is distributed by the Midwest Democracy Network, an alliance of political reform advocates who are working to strengthen democracy and build the capacity of the public to participate and affect government decision-making.

Houston noted that Common Cause of Michigan will continue to work with legislative leaders and other reform minded organizations including the Michigan Campaign Finance Network, League of Women Voters and the ACLU to strengthen Michigan’s FOIA laws.

To view the full report online, visit www.citizenadvocacycenter.org or www.midwestdemocracynetwork.org.

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The Citizen Advocacy Center (www.citizenadvocacycenter.org) is a non-profit, non-partisan community legal organization dedicated to building democracy for the 21st century. Center community lawyers and volunteers focus on strengthening the citizenry's capacity and motivation to participate in civic affairs, building community resources, and improving democratic protocols within our community institutions.

The Midwest Democracy Network (www.midwestdemocracynetwork.org) is an alliance of political reform advocates committed to improving democratic institutions in Illinois, Michigan, Minnesota, Ohio and Wisconsin. The Network includes state-based civic and public interest organizations as well as prominent academic institutions and respected policy and legal experts.

The Joyce Foundation (www.joycefdn.org) supports efforts to protect the natural environment of the Great Lakes, to reduce poverty and violence in the region, and to ensure that its people have access to good schools, decent jobs, and a diverse and thriving culture. We are especially interested in improving public policies, because public systems such as education and welfare directly affect the lives of so many people, and because public policies help shape private sector decisions about jobs, the environment, and the health of our communities. To ensure that public policies truly reflect public rather than private interests, we support efforts to reform the system of financing election campaigns.

Sunshine Week (www.sunshineweek.org) is a national initiative to open a dialogue about the importance of open government and freedom of information. Participants include print, broadcast and online news media, civic groups, libraries, non-profits, schools and others interested in the public’s right to know.