



West Virginia

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March 25, 2021

Speaker Roger Hanshaw
Speaker of the West Virginia House of Delegates
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State Capitol Complex
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Clerk Steve Harrison
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sent via email and via certified mail with return receipt requested

Re: Thirty-Day Notice of Intent to Take Legal Action Regarding Violations of The West Virginia Open Governmental Proceedings Act

Speaker Hanshaw and Clerk Harrison,

I am writing on behalf of the American Civil Liberties Union of West Virginia to provide notice that, pursuant to Section 55-17-3 of the West Virginia Code, our organization is prepared to take legal action in 30 days in the Circuit Court of Kanawha County against the West Virginia House of Delegates and the Office of the Clerk of the House of Delegates for violations of the West Virginia Open Governmental Proceedings Act, W. Va. Code § 6-9A-1 *et. seq.*, (hereinafter “Open Meetings Act”).

On Wednesday, March 24, 2021, members of the public were denied access to the 9 a.m. House Technology and Infrastructure Committee meeting because the audio feed of the meeting—the only opportunity by which the public can currently observe the legislative process—was cut off completely for substantial periods of time. When audio *was* available, the quality was so poor that it was impossible to ascertain the substance of any discussion between committee members or on votes taken on the bills before the committee.

Sunshine laws like the Open Meetings Act are intended to create greater transparency in government. The purpose of the Act is to promote “open government” and to allow the public “to educate itself about

government decision-making through individuals' attendance and participation at government functions, distribution of government information by the press or interested citizens, and public debate on issues deliberated within the government." W. Va. Code § 6-9A-1.

The Open Meetings Act requires that "[e]xcept as expressly and specifically otherwise provided by law, whether or heretofore or hereinafter enacted . . . [or if an exception by statute applies] all meetings of any governing body shall be open to the public." *Id.*

Because of the COVID-19 pandemic, the general public does not have access to the Capitol to observe the legislature in person. When members of the public were denied the ability to access the meeting because of a technology failure, the House in moving forward with the meeting acted in blatant violation of the Open Meetings Act.

Members of the committee and legislative staff were notified once our organization became aware of the issue. We were informed that the committee and staff were already aware of this issue, and that the meeting would continue even though it meant that the public could not exercise its right to meaningfully participate in the legislative process.

The law provides that, if a governing body is found to be in violation of the Act, "[t]he court is empowered to compel compliance or enjoin noncompliance with the provisions of this article to annul a decision made in violation of this article." W. Va. Code § 6-9A-6. If litigation is brought in this matter, the relief sought will be exactly that: **a request for a court order stating that any decision made by the committee in the March 24, 2021 meeting be nullified.** If relief is granted, any law that is passed that was voted on in this committee meeting will be voided. We will also seek attorneys' fees and costs.

In enacting the laws relating to open governmental proceedings, the legislature stated:

[T]he citizens of this state do not yield their sovereignty to the governmental agencies that serve them. The people in delegating authority do not give their public servants the right to decide what is good for them to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments of government created by them.

W. Va. Code § 6-9A-1.

A technology failure, unintentional or otherwise, does not grant the legislature authority to give "public servants the right to decide what is good for [the public] to know or what is not good for them to know." When in-person access to the Capitol is restricted, it is more important than ever to ensure that the public may remain informed through the limited channels available.

Regards,



Loree Stark
Legal Director, ACLU-WV