The key question in the ongoing legal tussle over Gov. Scott Walker's budget repair bill comes down to this: "Must the Legislature comply with the state's Open Meetings Law?"

At first glance, the answer might seem obvious, since the Legislature itself pledged to comply when it passed the law in 1975. Here's the exact language:

"In conformance with article IV, section 10, of the constitution, which states that the doors of each house shall remain open, except when the public welfare requires secrecy, it is declared to be the intent of the legislature to comply to the fullest extent with this subchapter."

But whether this expressed statement of legislative intent amounts to an unconditional, unequivocal and enforceable legal duty is the central disputed issue in the lawsuit now blocking implementation of 2011 Wisconsin Act 10, commonly known as the Budget Repair Bill.

In large part, the dispute concerns the separation of powers doctrine, which prevents one branch of government from exercising or infringing on powers granted to other branches. Some powers are shared by the branches; others are exclusive.

The Wisconsin Constitution vests the legislative power in the state Senate and Assembly, of course, and provides that "each house may determine the rules of its own proceedings." The term "Rules of proceeding" has been defined as those rules that concern the process the Legislature uses to propose or pass legislation, which might also be said of the Open Meetings Law's requirements. In turn, the state Constitution grants the judicial branch the power to determine whether legislation is constitutional.

To reconcile these potentially conflicting constitutional powers, our Supreme Court has long held that courts may not interfere with purely internal legislative procedures, even those contained in a statute, unless the statute embodies a constitutional requirement.

In other words, deciding whether the Open Meetings Law can be enforced against the

Legislature requires the courts to determine if it reflects mere “rules of proceeding” or embodies constitutional requirements for the valid exercise of legislative power. The Court of Appeals, in certifying the case to the Wisconsin Supreme Court, framed this issue as follows:

“It appears to us that the central question presented ... is whether the Open Meetings Law’s express reliance on and reference to Wis. Const. Art. IV, § 10 means that the statute should be interpreted as protecting a constitutional interest, thus subjecting alleged violations by the legislature or subunits thereof to judicial review .... If the Open Meetings Law is not viewed as protecting a constitutional right, then it would appear ... that a court would have no authority to void an act based upon an alleged violation.”

Just last year, the Supreme Court noted, in a decision under the Open Records Act, that “if Wisconsin were not known as the Dairy State it could be known, and rightfully so, as the Sunshine State. All branches of Wisconsin government have, over many years, kept a strong commitment to transparent government.”

In writing these words, the court could not have known that it would soon be called upon to decide, consistent with the separation of powers doctrine, whether that commitment can be enforced against the legislative branch, especially in such a visible and controversial context. Nor could the general public have known that the Open Meetings Law’s application to the Legislature would be in doubt more than 35 years after its passage.

How the state Supreme Court resolves those questions will have profound consequences for Wisconsin for some time to come.

Your Right to Know is a monthly column distributed by the Wisconsin Freedom of Information Council (www.wisfoic.org), dedicated to open meetings and open records. Bob Dreps, a council member, is an attorney with Godfrey & Kahn in Madison.