Statement by Chris Powell
on behalf of the Connecticut Council on Freedom of Information

in support of Senate Joint Resolution 32
proposing an amendment to the state Constitution
concerning the practices and procedures of the courts

Government Administration and Elections Committee
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My name is Chris Powell. I'm the managing editor of the Journal Inquirer in Manchester and legislative chairman of the Connecticut Council on Freedom of Information, on whose behalf I speak in support of Senate Joint Resolution 32, proposing an amendment to the state Constitution concerning the practices and procedures of the courts.

The purpose of this amendment is to make plain that the openness and accountability of Connecticut's courts will be determined by ordinary statute made by the General Assembly and the governor. The purpose of this amendment is to enable the application to the courts of freedom-of-information law.

Even after all the scandals of secrecy in Connecticut's courts of the last several years, the Judicial Department maintains that the governor still do not have the authority to legislate rules for the openness and accountability of the courts. The judiciary maintains that the constitutional principle of separation of the powers of government precludes such legislation.

Connecticut's Constitution says little about the judiciary. But there is an explanation for its brevity. The powers and jurisdiction of the courts, the Constitution explains, "shall be defined by law." That is, the Constitution says the General Assembly and the governor will make the laws determining what the courts do and how they do it.

Connecticut's Constitution also issues a commandment. It says: "All courts shall be open" -- open without the slightest qualification.

What does this mean?

Connecticut's courts have construed it to mean: We are the law and only we will decide when mere citizens get a look at us. So nearly every attempt to apply Connecticut's freedom-of-information law to the courts has been defeated in the courts themselves.

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The openness recently being offered by the courts is only a matter of the Judicial Department's sufferance. The acting chief justice himself, supposedly a supporter of open government, has warned us explicitly. Don't think that we are becoming more open because we accept the jurisdiction of freedom-of-information law, the acting chief justice says, because we do not. No, the Judicial Department insists on the power to go back to its old secrecy when the scandal fades away.

But separation of powers does not mean that the courts can make their own rules. No, separation of powers means that each branch of government can *exercise* only its own powers. Separation of powers does *not* mean that the legislature and the governor cannot *define* the powers of the judiciary. For defining the powers of the judiciary is exactly what the Constitution says the legislature and the governor *must* do.

In claiming the power to legislate for themselves, Connecticut's courts have separated the General Assembly and the governor from *their* powers. The constitutional amendment before you is necessary to *restore* the separation of powers.

That is why this amendment is not really about the courts. Rather it is about *you*, our legislators -- whether you will reclaim your power on behalf of our democracy, the power to make the rules for the *whole* of our government.

Chris Powell
Managing Editor
Journal Inquirer
306 Progress Drive
Manchester, Connecticut 06045-0510
860-646-0500x307
CPowell@JournalInquirer.com