

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

**in regard to the nomination of Judge Chase Rogers  
as chief justice of Connecticut**

**Judiciary Committee  
Thursday, April 5, 2007**

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 regard to the nomination of Judge Chase Rogers as chief justice of Connecticut.

The Connecticut Council on Freedom of Information urges you to put to Judge Rogers the following questions about the openness and accountability of Connecticut's courts.

- 1) Connecticut's Constitution says, "All courts shall be open." Yet all sorts of court documents and proceedings are concealed from the public. What is the constitutional authority for concealing court documents and proceedings from the public? Just what does "all courts shall be open" mean?
- 2) What was the authority for the "super-sealing" of the case files whose concealment recently was in litigation? What do you think of this episode in the history of Connecticut's courts? How could something like that happen?
- 3) Other than with an amendment to the state Constitution, how can Connecticut guarantee that "super-sealing" won't happen again if the Judicial Department wants to return to that practice?
- 4) Although the Judicial Department recently unsealed the docket sheets in the 40 "Level 1" "super-sealing" cases, the records of about 800 cases remain sealed at what is called Level 2, in which the names of the parties have been made public but nothing else. The parties in these cases include prominent lawyers and a judge. How will you address the "Level 2" cases?
- 5) Do the legislature and the governor have the authority, by enacting ordinary legislation, to determine the practices and procedures of the courts, and particularly to determine the openness and accountability of the courts? Why or why not, and when and when not?
- 6) Do legislative committees have the authority to subpoena judges just as they can subpoena anyone else, or are impeachment proceedings necessary before legislative committees can subpoena judges? Why?

**[MORE]**

7) Please describe your interpretation of the constitutional principle of the separation of powers of the three branches of government. Does the separation of powers mean that each branch of government can *exercise* only its own powers, or does it mean that the judiciary may *define* its own powers without the approval of the other branches of government, approval signified through ordinary legislation?

8) Do the people have constitutional, statutory, and common law rights of access to the courts, or is public access to the courts entirely or to some extent a matter of the judiciary's sufferance? How can the public's rights of access to the courts be made fully a matter of constitutional right and law and not at all a matter of the judiciary's sufferance?

9) Why should Connecticut not follow the federal system of judicial rule-making, in which the federal judiciary proposes rules to Congress and Congress and the president decide whether to enact these rules and give them force by ordinary legislation?

10) Would you consider asking Justice David M. Borden to become chief court administrator to help you continue his efforts to make the judiciary more open and accountable?

CP

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