

RICHARD BLUMENTHAL
ATTORNEY GENERAL



1

55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120

Office of The Attorney General
State of Connecticut

TESTIMONY OF
ATTORNEY GENERAL RICHARD BLUMENTHAL
BEFORE THE JUDICIARY COMMITTEE
APRIL 9, 2007

I appreciate the opportunity to support the concept of Senate Joint Resolution 32, A Resolution Proposing an Amendment to the State Constitution Concerning the Practices and Procedures of the Courts.

This proposed constitutional amendment would specifically provide authority to the General Assembly regarding judicial practices and procedures, including measures assuring openness and accountability to the public. It would authorize a permanent legislative ban on docket sealing, super sealing and selected secret proceedings.

Connecticut court proceedings and operations need to be more open and more accountable. Approval of Senate Bill 1479 and its landmark measures should significantly open judicial proceedings and restore and enhance citizen confidence in our courts.

The Judicial Branch has responded to similar task force recommendations by quickly implementing a number of them. But further progress may be problematic.

Members of the Judicial Branch have questioned whether additional steps -- some contained in Senate Bill 1479 -- are necessary now. On some, the Judicial Branch has remained neutral.

Most troubling, on all such measures relating to judicial practice and procedure, the Judicial Branch has apparently adhered to the position that only the judges have authority to enact such rules. Consistently and constantly, the judges have asserted that the Constitutional separation of powers doctrine deprives the legislature of any meaningful authority to alter judicial procedures so as to make the courts more open and accountable. In the judges' view, only they have power over their branch's rules. The legislature has virtually none.

Regrettably, the Judicial Branch's position makes this constitutional amendment necessary and unavoidable. The judges may have the last word in interpreting the Constitution of Connecticut, but the people have the final say in making it. We need not today debate or conclude whether the judges are right in their interpretation of the separation of powers doctrine. Article Second states "... The powers of government shall be divided into three distinct departments, and each of them confided to a separate magistracy, to wit, those which are legislative to one those which are executive, to another, and those which are judicial, to another."

Many scholars would contend that the separation of powers doctrine is not intended to be absolutist or preclude all legislative authority -- especially concerning rules or procedures to assure openness and accountability. The only sure and enduring way to resolve the issue is through a constitutional amendment. Whatever consensus is reached today informally may unravel in future years.

For the pending legislative openness accountability measure to be adopted -- with assurance that it will withstand possible constitutional attack in the courts -- the constitutional amendment is critical. Without this amendment, uncertainty will plague the reforms. We cannot wait -- as some judges may argue -- until the reforms are struck down, hoping it won't happen. The public interest in public access and accountability should be made as central and certain as the separation of powers principle itself.

I therefore support the concept of clearly and explicitly establishing legislative authority to ensure that Judicial Branch proceedings are open and accountable. The language of Senate Joint Resolution 32 may be somewhat too broad, extending legislative authority into unintended areas, altering or impinging on the important and vital constitutional concept of three co-equal branches of government. I am willing to work with the committee to carefully craft an amendment that preserves this key constitutional concept while ensuring open and accountable courts.

Thank you.