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Testimony of Norman K. Janes, President
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**Senate Joint 32, Resolution Proposing an Amendment to the State Constitution
Concerning the Practices and Procedures of the Courts**
Judiciary Committee
April 9, 2007

Senator McDonald, Representative Lawlor, and members of the Judiciary Committee, thank you for the opportunity to comment on Senate Joint 32, Resolution Proposing an Amendment to the State Constitution Concerning the Practices and Procedures of the Courts.

My name is Norm Janes. I am the president of the Connecticut Bar Association and am also the executive director of Statewide Legal Services of Connecticut, Inc. (SLS), in Middletown. SLS is the entry point for low-income persons in Connecticut to access free legal assistance in civil legal matters. For the record, I want to make clear that I am not speaking on behalf of Statewide Legal Services of Connecticut; in fact I am here on my own personal time.

I am presenting this testimony on behalf of the CBA. With over 10,200 members, the CBA is the largest and, I believe, the premier professional association of attorneys in the State of Connecticut. The CBA is interested in legislative proposals that affect the substantive and procedural rights of many practice disciplines, and is keenly interested in legislation that concerns the administration of justice. However, there is one particular area that is arguably of utmost importance to our members: the maintenance of a vital and independent judicial branch. On behalf of the CBA, I respectfully request that the Judiciary Committee **not act** on Senate Joint Resolution 32.

When deliberating on Senate Joint Resolution 32, the CBA urges this committee to consider very carefully the doctrine of separation of powers that defines the allocation of legislative, executive, and judicial powers among the three branches of government. This is the heart of the genius of the American legal and political system and critical to our continued functioning as a democratic society. The basic premise of this great doctrine is that each branch of government performs unique functions and provides a “check” on the powers of the others. As they balance the power of government among them, none of the branches may arrogate to itself the core functions of another branch of government.

Senate Joint Resolution 32 would remove the ultimate authority and responsibility of the Judicial Branch to promulgate its own rules and place it squarely in the legislative and executive branches. As drafted, the proposed constitutional amendment would establish that state court procedural rules would be established by statute, which clearly would require legislative action and executive approval. Such an amendment would require the legislature to pass and the governor to approve laws such as determining the assignment of judges, the limit of pages in an appellate brief, whether a particular motion must be argued or whether it can be decided on the papers submitted, and many other operational or procedural issues which the judicial branch currently establishes by court rules.

There are those who will argue that this proposal is legitimate because the Legislature historically has been involved in how the Judicial Branch operates and this is simply a clarification of where the line of separation should be drawn. This is only partially correct. The Legislature does pass laws such as those that describe crimes and

causes of action the Courts will decide upon, the weight and nature of evidence of evidence that can be presented and the extent of verdicts and sentences that can be ordered. Thus, there is no bright line that clearly delineates a judicial from a legislative function. This proposal, however, which gives the Legislature sole authority to make rules for the Courts, falls well beyond any acceptable line.

The central function of the Judicial Branch is the adjudication of cases. Adopting and implementing practices and procedures for the adjudication of cases is an integral part of this function. The special knowledge and experience for formulating and adopting those rules properly lies within the Judicial Branch. Shifting this authority to the legislature or the executive branch would only create a loss of this experience and subject the rules to a political process. In order to carry out its unique mission, the Judicial Branch must be immune from the ebb and flow of popular political concerns. Removing the rule-making authority from the courts would be tantamount to stripping the Judicial Branch of one of its most important core functions and, therefore, would violate the doctrine of separation of powers. For these reasons, I urge the committee to **reject** Senate Joint Resolution 32

Thank you, again, for the opportunity to comment on Senate Joint Resolution 32. I would be pleased to answer any questions you may have.

