

**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**

**Judiciary Committee, General Assembly
Monday, April 9, 2007**

My name is Chris Powell, I live in Manchester, I'm the managing editor of the Journal Inquirer there, and I'm speaking for the Connecticut Council on Freedom of Information in support of Senate Joint Resolution 32, the constitutional amendment to enable the application of freedom-of-information law to Connecticut's courts.

We have distributed to you the statement in support of this resolution by the foremost expert on its subject, Professor Richard S. Kay of the University of Connecticut Law School. Your former colleague on this committee, Superior Court Judge Dale W. Radcliffe, also has explained the necessity of this resolution. That is, the power to make rules for the courts, including rules for the openness and accountability of the courts, belongs to the legislature and the governor through ordinary legislation, but our courts refuse to acknowledge this and so have subverted democracy.

The constitutional amendment proposed here would only restore to Connecticut the arrangement it long had and the arrangement the federal government always has had. No one on the federal level complains that there is some violation of the separation of powers when Congress supervises judicial rule making, because the principle of separation of powers applies to the *exercise* of those powers, not the *definition* of those powers.

Despite the Judicial Department's recent openness campaign, a few months ago our state Supreme Court proclaimed that whether information as basic as court dockets is public is for the courts themselves to decide arbitrarily, not for the law. And last week the nominee for chief justice, Judge Chase T. Rogers, told you that the authority for making rules for the courts is a "gray area" in the law.

This committee questioned Judge Rogers for more than four hours. Much of that questioning involved the rule-making power. *Judge Rogers evaded it all.* This committee has no idea where Judge Rogers stands on the rule-making issue, and little idea where she stands on anything else. From the chair of this committee Judge Rogers was even *encouraged* not to answer any question she found inconvenient.

So your process with Judge Rogers did not enlighten you or the public. To the contrary, it kept us all in the dark.

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But then the rule-making issue, what Professor Kay calls the issue of judicial supremacy, is not really about the judiciary as much as it is about the legislature and particularly about you members of this committee, a majority of whom are not just legislators but also holders of office in the Judicial Department, commissioners of the Superior Court.

Senate Joint Resolution 32 settles the rule-making issue, restores the separation of powers of our government, sends the judiciary back to deciding cases and gets it out of legislating, ends the contempt in which the judiciary long has held the legislature, and ensures openness and accountability for what has been the most secretive and unaccountable branch of government.

Whether it is approved or rejected by this committee, Senate Joint Resolution 32 also will determine the primary loyalty of many committee members -- whether they are legislators first or commissioners of the Superior Court first. The Connecticut Council on Freedom of Information asks you to be legislators first and approve this resolution.

CP

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