



Supreme Court
STATE OF CONNECTICUT

Chambers of
Peter T. Zarella
Associate Justice

231 Capitol Avenue
Hartford, CT 06106
860-757-2119

Testimony of Hon. Peter T. Zarella
Judiciary Committee Public Hearing
March 26, 2009

**Senate Joint Resolution 46, Resolution Proposing an Amendment to the
Constitution of the State Concerning the Procedures of the Courts**

Thank you for the opportunity to testify, on behalf of the Judicial Branch, in opposition to Senate Joint Resolution 46, *Resolution Proposing an Amendment to the Constitution of the State Concerning the Procedures of the Courts*. I greatly appreciate the courtesy that you have extended to me by allowing me to testify at this hour.

In my view and in the view of the Branch, amending any constitution is an extraordinary act that should be done only as a last resort. A constitution should be amended when a significant and recurring problem has been identified, and the only solution is a constitutional amendment. The way I analyze the question before you today is by considering the following:

- 1) **What is the problem that is in need of a solution?**

For over 200 years, the judges of the Superior Court have adopted the procedural rules for the Superior Court without any substantive controversy over the rules adopted. We know that some believe the issue of "secret files" that dates back five or more years demonstrates that the rules need to be handled by others. This argument

fails for two reasons. First, the conduct that led to the problem was not authorized by the rules of practice. Second, the Rules Committee acted within months to lay out in great detail the procedures that must be followed to withhold any matter from the public, and the judges adopted these procedures. So, in fact, the judges themselves properly adopted rules to quickly and fairly address the sealed files controversy.

Additionally, the judiciary has advised the Legislature annually in writing since 1957 of changes to the practice book and, to my knowledge, has never had any negative feedback from the Legislature regarding any rule that was passed. This alone is evidence that the present rulemaking process has worked.

2) Is the problem that needs to be resolved one that requires amending the root document governing the relationship between the people and their government?

I can't answer this question satisfactorily because, as I have just noted, I can't identify the problem. It may be that some members of the media believe that without the Legislature's involvement with the rulemaking function, the judges will adopt rules that are contrary to an open and accountable judicial system. First of all, I don't believe that is the case. And second, I don't believe that relying on "what if" is reason enough to change a process that for 200 years has effectively ensured that the people who come into our courts will receive a fair and impartial hearing before a neutral arbiter.

3) Is the transfer of the rulemaking power from the Courts to the Legislature good public policy?

I think there are a variety of reasons why this proposal makes for poor public policy:

I strongly believe that judges are in the best position to make these rules because when an issue comes to our attention, we can act swiftly to make necessary changes. For example, as I just mentioned, when the sealed file controversy occurred, the judges, within a few months, enacted rules that set up a process to seal a document or close a courtroom. These changes outlined the procedures that must be followed in the event that there is a sealing or courtroom closing in criminal, civil or family cases. However, if you look at the current statutes, a judge may hold a family hearing in chambers, close a courtroom or seal any family documents, with no procedures in place to guarantee openness and accountability. I offer this not as a criticism but as an illustration as to how quickly we can move to correct a problem.

In addition, judges are in the courtroom every day and preside over hundreds of thousands of matters each year. For this reason, judges can identify when changes to the rules would be beneficial to the people using our courts. We monitor changes nationally and internationally to ensure that the rules stay current and allow the courts to move business in the most orderly and efficient manner possible. This does not mean that the rules are made without input from lawyers and others who use our court system.

Quite the contrary, the rulemaking process is open and allows for public input. All votes are taken in public. The agendas and minutes of the Rules Committee are posted on the Judicial Branch's website. The public is welcome to attend all of the meetings. Each proposed rule is subject to a public hearing, where comments are invited from members of the public, the bar and the Legislature. The Rules Committee submits its recommendations to all of the judges of the Superior Court who discuss and

vote on these proposals during an open meeting that is often covered by CT-N (like the legislative sessions).

Since becoming the Chair of the Rules Committee, I have worked to increase the communication and collaboration between the Judiciary Committee and the Rules Committee. As you may recall, I invited you to attend a joint meeting back on October 20th with the goal of promoting dialogue about potential rules changes that were being considered. Four of you attended. You should have received an invitation to attend another joint meeting scheduled for Tuesday, April 7th at 12 noon in the Supreme Court building. The purpose of this meeting is to discuss with you the proposals that the Rules Committee is currently considering and to coordinate efforts. I firmly believe that we will be able to resolve any disagreements that may arise as to a particular rule with mutual respect and communication.

Also, the judiciary plays the important role of ensuring the constitutional rights of all its citizens are protected. We are acutely aware of the need to provide a level playing field for all litigants. We accomplish this in part by making sure that the rules of court do not favor one party over another or the state over the defendant. The legislature, by the very fact that its members are elected, responds to constituents when it comes time to consider bills. The states attorneys, public defenders, insurance companies, the defense lawyers' associations, the trial lawyers' association, the press and others all attempt to influence legislation and many fund campaigns. Judges are not elected and do not have the corresponding pressures that elected officials face.

For these and other reasons, I believe that this amendment is bad public policy.

4) Finally I believe that there needs to be a recognition that legislators (and judges) come and go but the constitution lives on.

The totality of the consequences of the passage of any constitutional amendment can never be known until long into the future. The sum total of the effects of this amendment on our judiciary will therefore not be realized for years to come, long after you have left office and I have left the bench. What we do know is that 200 years of experience has shown us that Connecticut has one of the outstanding judiciaries in the country. In part, this is a result of the work of the superior court judges at their annual meeting to ensure that the rules provide for a level playing field. Is the unknown product that may result from this amendment worth risking the successful and proven 200 hundred year old practice of allowing courts to create the rules to govern court procedures? Even though that was intended to be a rhetorical question I will answer it. I think not.

One final point, before voting on this proposal I would ask that each member of this committee take a brief look at the provisions contained in the Practice Book if you have not done so already. Then I would ask the question, do I really think it is the job of the legislature to get involved in provisions of this nature?

The Judicial Branch strongly opposes this constitutional amendment and urges you to reject this proposal. I again thank you for the courtesy that you have extended to me, and I would be happy to answer any questions that you may have.

