



Written by [Joe Wolverton, II, J.D.](#) on February 13, 2012

Bill to Broadcast Supreme Court Proceedings Passes Committee

As the matter stands today, only a handful of observers are permitted to observe the hearings live, while audio recordings of the cases are released to the public at the conclusion of the proceedings.

The bill would not mandate that all proceedings be broadcast, however.

Senators Charles Grassley (R-Iowa) and Dick Durbin (D-Ill.) have cosponsored the proposal, known as the Cameras in the Courtroom Act of 2011. The measure was introduced on December 5, 10 years after the Sunshine in the Courtroom Act was authored by Senator Grassley and Senator Chuck Schumer (D-N.Y.).



A companion bill of identical name was introduced in the House the following day by Representative Gerry Connolly (D-Va.). That bill is currently under consideration by the House Judiciary Committee.

As highlighted above, the legislation, if passed by both houses and signed by the President, would "permit television coverage of all open sessions of the Court unless the Court decides, by a vote of the majority of justices, that allowing such coverage in a particular case would constitute a violation of the due process rights of 1 or more of the parties before the Court."

Setting aside the rare reference by anyone in Congress to the protection of constitutional civil liberties, there is the more interesting question of whether or not the Congress has the constitutional authority to mandate anything to one of the other branches of the federal government.

The tripartite design of power distribution established by the Constitution provides each branch with a check on the authority of the others, while balancing the three by granting each a very limited enumeration of powers.

While it is true that the Constitution does not explicitly endow any one branch with any preeminence over its sister branches, James Madison wrote in [The Federalist Number 51](#) that "it is not possible to give to each department an equal power of self-defense. In republican government, the legislative authority necessarily predominates."

When one reads Madison's statement in conjunction with that of Alexander Hamilton in the same collection of letters wherein the latter says that the judicial branch is the "weakest of all the departments of government," it appears that Congress will have its way with the broadcast policies of the Supreme Court.

Indeed, given that the representatives in the Senate and the House are accountable to the people in periodic elections, it would seem to be more constitutionally sound to place the responsibility for making such determinations in the hands of the legislative branch. The black letter of the Constitution,



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however, gives no such power to the Congress, so the debate is an intriguing one.

This isn't the first time a bill has been introduced in Congress calling for the televising of the goings on in the nation's highest court. As a matter of fact, during the last session of Congress, a measure much the same was approved by the Senate Judiciary Committee. That committee has reported similar bills out of committee at least three times in the recent past, as well.

A former member of that committee has come out in support of the Cameras in the Courtroom Act. Arlen Specter, himself an attorney, testified on the matter at a hearing on the bill held in the Senate Subcommittee on Administration, Oversight and the Courts. Said Specter, "I believe that if the court were televised, there would be an understanding and an accountability." He further argued that increased judicial transparency will result in a more informed public. The public, he insisted, must be informed of crucial Supreme Court holdings so that they might be made aware of decisions that affect their rights. "Sunlight is the best disinfectant," he added.

Given the fact that during 2012 the Supreme Court will hear challenges to the Arizona immigration law and the individual mandate of ObamaCare, the sponsors see this bill as especially timely, giving them a chance to strike while the iron is hot.

"This upcoming case is the perfect example for why the Supreme Court should televise its proceedings. All of us deserve to see and hear the legal arguments in a case which will have a lasting effect on every single American," Grassley said.

The high court has taken small steps toward greater transparency, however. Last year, for example, the court began releasing audiotapes weekly, whereas previously they were provided only upon the completion of each term.

Of course, the bill has its opponents, as well.

Senator Jeff Sessions (R-Ala.) believes that the high court is strengthened by steering clear of the "hustle and bustle" of the world outside. He opined that cameras may adversely affect the objectivity of the court and increase the public's perception that the court is a political body, thus reducing its "moral authority." "To the degree our judges worry about that, I think we should give them deference."

Another opponent of the measure referred to the separation of powers issue. Third Circuit Court Judge Anthony Scirica stated, "Justices take an oath to 'faithfully and impartially discharge and perform all the duties' of the office. It is not unreasonable to defer to the Court on how it conducts its deliberations and speaks to the American people."

In his testimony before the subcommittee last December, Judge Scirica made a persuasive point regarding the ability of laymen observers to understand the adversarial nature of the court's proceedings. Justices, for example, are liable to ask very provocative statements of parties in a case in order to elicit a particular response, not because the justice personally agrees with the principle behind the question or the response.

"In a high profile or especially sensitive case, some might view a judge's question as revealing bias or a closed mind unreceptive to a party's position or creating the impression that the judge is not neutral, not fair," he warned. "Cameras would likely augment this problem," he added.

A Reuters article reporting on the Grassley-Durbin bill cited "opponents" of the measure who insist that cameras in the courtroom would "tempt attorneys to play to the cameras, allow video clips to be taken out of context, and possibly mislead the public."



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Unconvinced, Grassley actually invoked the Constitution (albeit in a sideways and inaccurate way) in his defense of his latest attempt to televise the goings on at the Supreme Court. As he was [quoted in the *Washington Post*](#), Grassley said:

Our Constitution requires that the government be accountable to the people. The best way we can ensure that the federal government is accountable is to create transparency, openness and access. This is a tremendous opportunity which would help increase understanding of, and appreciation for, the highest court in the land.

Although none of the nine justices of the Supreme Court has publicly opined on this latest bill, it is well-known that they have opposed similar measures, seeing such a proposal as an intrusion that unnecessarily would disrupt the proceedings.

At the executive meeting during which the bill was deliberated by the Judiciary Committee, Senator Dianne Feinstein (D-Calif.) spoke out against passage of the bill, reminding members of some high-profile cases whose outcomes were generally regarded to have been influenced by the presence of cameras in the courtroom — the O.J. Simpson trial in 1995, for example.

Said Feinstein, "I don't believe we should tell the Supreme Court what to do. We are separate branches of government. I do not believe that justice is better because it is televised. And I have seen actual situations in my view where it is worse because it's televised."

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