

Testimony of the Honorable Steve King
Subcommittee on Courts, Intellectual Property, and Internet
Hearing on H.R. 917, the Sunshine in the Courtroom Act of 2013
Wednesday, November 3, 2014

Chairman Coble, Ranking Member Nadler, I would like to thank you for having a hearing on this very important issue. I proposed H.R. 917, the Sunshine in the Courtroom Act, because I believe Congress has both the Constitutional authority to act and the duty to use that authority to expand public access to our courts.

It is true that court proceedings today are open to the public. But this is only in the narrowest of senses. District court proceedings are open if you have time off of work when most proceedings are being held. In the case of appellate courts, they are held often in central locations in large districts. Attendance at the Supreme Court requires travel to Washington D.C. and the time and patience to stand in line for hours and even then you might not be able to actually witness an oral argument. Today, we can do much better than that to expand access and open up our government to the people who pay for and live under it.

Some will say many courts already offer audio recordings of oral arguments. The Supreme Court releases audio recordings of most arguments within days and all courts produce their opinions for public review. However, anyone that reads opinions know they are not the most accessible even to the trained reader. Further, they do not shed light on the procedure of the courts which is as crucial for the public as the outcomes. We can do so much more to inform the public of how our great judicial branch operates.

My bill would allow presiding judges in appellate courts, including the Supreme Court, to permit electronic recording and broadcasting to the public of any court proceeding over which the judge presides. If the presiding judge and a majority of the judges participating in the proceeding determine that recording and broadcasting to the public would constitute a violation of the due process rights of any party, then the recording is not allowed.

District court judges would be allowed to permit recordings and broadcast to the public so long as they order the obscuring of the voice and face of any witness upon the request of that witness. Judges are also not allowed to allow coverage of jurors. Also, the judge, like his appellate judge colleagues, is not allowed to permit broadcasting and recording to the public if doing so would constitute a violation of due process rights of any party.

From the founding of our nation we have opened up the machinery of government to the public. The people pay for the operations of government and their lives are directly affected by the decisions made by their leaders. If you take a tour of the Capitol you see public gallery space available in the old House and Senate. Likewise, the courts have also always been open to the public. The Sixth Amendment explicitly provides defendants in criminal prosecutions the right to a public trial. It is a great aspect of our nation that the government is accountable to the people not only at election time, but in its daily operation.

Accountability provides transparency which in turn decreases the chance of improper behavior while at the same time expanding the public record. Court reporters are human and can make mistakes, but cameras can create an alternate, permanent record for reviewing courts.

Also, expanded public access provides a valuable educational tool to the American people. Simply reading about procedure in the courts or Congress often does not capture the imagination or paint a vivid picture of the life of our democracy. It is easier to understand the rationale behind why certain procedures are in place when you see them work before your eyes. And I'm confident that more knowledge of our system will engender more pride and respect for the institutions that make up the foundation of this country.

Some have raised concerns about the constitutionality of the Congress inserting itself in the affairs of a separate branch of government. The first point I would make about this is that my bill would simply allow the judges to use their discretion to decide if they would like to film proceedings. This is hardly an example of the Congress dictating to the court what their procedures must be.

Regardless, the Constitution makes clear that Congress does have the authority necessary to pass my bill. For example, Article I Section 8 provides the power of Congress to "constitute tribunals inferior to the Supreme Court." If Congress can create the courts, then they surely have the corresponding power to expand public access to those institutions. Article III Section 1 recognizes the power of the Congress to "ordain and establish" inferior courts as well. Furthermore, Article III Section 2 provides the power of the Congress to make regulations for the Supreme Court. The Constitution thus provides a clear textual basis for the Congress to be involved in the procedures of the courts.

Another concern raised is that recording and broadcasting proceedings to the public will do damage to the work of the court. The argument is that cameras would make lawyers and judges target arguments to the public as opposed to focusing on the legal arguments. I think we would all share those concerns. Certainly, an attorney or judge would be doing a disservice if they played to the cameras as opposed to doing their jobs. However, we have codes of conduct for attorneys and judges to govern any possible misconduct. Overall, I believe we have responsible officers of the court that could function effectively in front of a camera.

Furthermore, I reject the idea that cameras will do any harm. This very hearing is before cameras. We are here to discuss the issue in a reasonable manner. The existence of cameras broadcasting us does not diminish the noble goal of this subcommittee or dampen the conduct of its Members. Instead, the cameras give millions of Americans the chance to see how the committee hearing process works who otherwise might never get to make the trip to Washington D.C. to see a hearing. It also provides them insight into this crucial issue that they may never otherwise get. It seems simple to me to say that providing more information to the American people about the institutions that govern them is not going to cause harm. Instead, it makes for a more open and transparent government along with a more educated public.

I would like to once again thank this subcommittee for taking the time to inform the public on such an important topic. There should be a robust debate to weigh the pros and cons presented by my

legislation. No doubt the Members and distinguished witnesses are fully prepared to engage in that debate. Thank you for allowing me the privilege to testify and good luck to my fellow witnesses and Members today.