



Written by [Joe Wolverton, II, J.D.](#) on December 8, 2011

## Senate Considers Bill Calling for Cameras in the Supreme Court

[Senators Charles Grassley \(R-Iowa\)](#) and Dick Durbin (D-Ill.) have cosponsored 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.

The legislation, presented on Monday, 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 scheme 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, no. 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."

Marry Madison's statement 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](#)," and 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, 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





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in the nation's highest court. As a matter of fact, during the last session of Congress, a similar measure 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, Arlen 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," Specter added.

Other witnesses echoed Specter's sentiments, arguing in favor of televised Supreme Court hearings.

[Tom Goldstein, publisher of the influential SCOTUS blog, testified](#) that the "allowing cameras inside the Courtroom is the next logical step" toward making important decisions and filings accessible to the American public.

Broadcasts of Court proceedings will reach segments of the public in a way that transcripts and audio recordings cannot. There cannot be any serious doubt that whereas at most a few hundred thousand people (almost all lawyers) will read the Court's opinion or oral argument transcript in the health care cases, tens of millions of ordinary Americans (at the very least) would watch all or part of the proceedings in the case with great interest.

Last month several cable channels (including CSPAN) filed applications with the Supreme Court requesting the privilege of being the first outlet to carry live broadcasts of the [court's hearing on ObamaCare set to be heard in March](#).

A spokesman for the court declined to comment on the television networks' requests regarding the healthcare hearings.

Senator Grassley sees the ObamaCare challenge as the prototypical case where cameras would aid the American people in understanding the law and the processes thereof. "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.

Recently, the court has made small steps toward being more accessible. Last year, for example, the court began releasing [audiotapes weekly](#), whereas previously they were provided only upon the completion of each term.

Not everyone agrees with Goldstein and Specter's perception of progress.

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."



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In his testimony, 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."

The last witness to testify before the subcommittee related that his own experience belied that assertion. [Iowa Supreme Court Justice Mark Cady informed](#) the Senators that for five years his court has broadcast online live coverage of all its hearings, and it has had no problems and that the cameras have not proven to be a distraction to anyone participating in the proceedings.



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