



STATE OF INDIANA
OFFICE OF THE ATTORNEY GENERAL

INDIANA GOVERNMENT CENTER SOUTH, FIFTH FLOOR
302 W. WASHINGTON STREET • INDIANAPOLIS, IN 46204-2770
www.AttorneyGeneral.IN.gov

GREG ZOELLER
INDIANA ATTORNEY GENERAL

TELEPHONE: 317.232.6201
FAX: 317.232.7979

September 2, 2015

Julia Vaughn
Policy Director
Common Cause Indiana
P.O. Box 1603
Indianapolis, IN 46206

Dear Ms. Vaughn:

In response to your recent letter I want to thank you for acknowledging the advocacy of the Office of the Attorney General in support of public access to records and transparency of government. The amicus brief filed in the case of *ESPN v Notre Dame Security Police Department* is the most recent effort to advocate for "transparency that is vital to gain and maintain the trust of the public," and it underscores that the police power is one of the most basic functions of the State's executive branch.

As you know, we also filed an amicus brief in *Evansville Courier & Press v. Vanderburgh County Health Department* in the fall of 2014. Our brief in that case supported arguments made by the newspaper, the Hoosier State Press Association, and others that certificates of death registration should be accessible under the Access to Public Records Act. The Indiana Supreme Court later ruled in favor of the newspaper and adopted many of the arguments favoring transparency that were made in our brief.

With that said, there is a fundamental distinction that must be acknowledged between filing the amicus brief in the earlier cases with what your organization is requesting in the pending appeal of the judicial decision not to order the Legislature to produce email records. The court's decision in the *Citizens Action Coalition et al. v. Koch et al.* case was solely based upon the separation of powers that rightly precludes the judiciary from interfering with internal matters of the legislative branch. Several appellate court decisions over the years have underscored the fact that the judiciary does not intercede in legislative disputes, and that the people's elected representatives in the Legislature determine what laws and public policy to pass and to what extent those statutes will be expanded or limited.

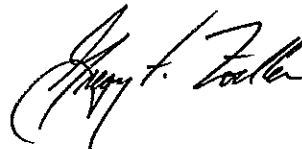
The constitutional separation of powers is intrinsic to the American form of government and an essential principle that the Office of the Attorney General stands behind. As state government's lawyer, the office has gone to court in support of the separation of powers in other cases in the past. To do what you are suggesting would require this office to take a legal position in opposition to our own law client, state government. The fact that the Legislature reserves, pursuant to statute, the right to hire its own outside counsel – and has done so in this specific case – does not relieve our office of the obligation to not act adverse to our law client's legal interest, since we continue to represent the Legislature in other unrelated legal matters.

So while the amicus brief in the recent *ESPN v Notre Dame Security Police Department* appeal is supportive of public access with regard to police powers, and the amicus brief in last year's *Evansville Courier & Press v. Vanderburgh Co. Health Dept.* appeal was supportive of public access with regard to cause of death information in death certificates, the ruling of the Marion County court involving our state legislature was not decided on public access grounds of whether legislative emails constitute a public record, but rather on separation of powers. Amicus briefs submitted by a variety of groups presenting multiple points of view often are useful for any court's edification, provided the non-party submitting the brief does not have a conflict with its current clients and is not arguing a non-sequitur. Other private lobbying groups whose positions on the dispute over legislation are congruent with yours might be better positioned to submit an amicus brief on your behalf for the Court of Appeals' consideration.

I have a history and precedent for engaging the Office of the Attorney General in legal cases where the rule of law supports transparency in public records. I have partnered with the Hoosier State Press Association and the Public Access Counselor to offer public educational programs about the importance of, and access to, public records, further showing my commitment to transparency. I will continue to seek open government in manners consistent within our legal framework and seek to ensure public entities fulfill their duties to constituents where appropriate.

Thank you for taking the time to express your view on this subject and for acknowledging our office's shared commitment to transparency.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregory F. Zoeller". The signature is fluid and cursive, with the first name "Gregory" being more prominent and the last name "Zoeller" following in a similar style.

Gregory F. Zoeller
Indiana Attorney General