



ADVISORY

April 19, 2016

IN 4-1 RULING INDIANA SUPREME COURT RULES IN FAVOR OF HOUSE; BUT SAYS GENERAL ASSEMBLY SUBJECT TO APRA

INDIANAPOLIS – The Indiana Supreme Court affirmed the trial court’s order of dismissal in the case of *Citizens Action Coalition, et al. v. Indiana House Rep., et al.* (Case Number: 49S00-1510-PL-00607). The Indiana Supreme Court concluded that the Indiana Access to Public Records Act does apply to the Indiana General Assembly. However, the court has allowed the General Assembly to avoid disclosing the emails to the public based on a work product exemption.

We completely agree with the Indiana Supreme Court's conclusion that the General Assembly is subject to the Access to Public Records Act, and that the trial court erred in holding otherwise -- and that is a victory for the citizens of Indiana. However, Justice Rucker is exactly correct that the majority, in holding that APRA’s “work product” exception applies to all emails sent to or received by state legislators, has deprived us (and for that matter any other citizens who might be interested in reviewing legislative communications) of any opportunity to make arguments that the work product exception is inapplicable to any and all legislative communications. As Justice Rucker aptly put it: “The majority’s ruling is not only premature, but it unfortunately weighs in on a significant separation of powers issue without an adequate record.”

The Supreme Court unfortunately has effectively slammed shut the door of transparency that the passage of APRA several decades ago had opened. It is indeed a sad day for those who advocate for open and transparent government in Indiana, and for all citizens who believe that government is the servant of the people rather than vice versa. It is now up to the General Assembly to remedy this blow against transparency by making clear it will honor the promise of open government contained in APRA’s preamble despite the license the Court has just given it to keep the public in the dark about its communications with lobbyists. Until it does, it is open to fair criticism that its passage of APRA was little more than a fraud perpetrated on the people of Indiana.

Background:

Citizens Action Coalition (CAC), Common Cause Indiana, and the Energy and Policy Institute (EPI) originally filed a suit in April 2015 in Marion County Circuit/Superior Court against the Indiana House Republican Caucus and State Rep. Eric Koch (R-Bedford) for violating the Indiana Access to

Public Records Act (APRA). The groups are asking the Court to declare that Rep. Koch and the Caucus are subject to APRA, which the legislators have denied, and to order disclosure of correspondence between Rep. Koch and utility companies regarding solar energy issues. Shortly after its initial hearing, Marion County Superior Judge James Osborn dismissed the case claiming he had no jurisdiction over House of Representative's affairs due to separation of powers, issuing a seven-line ruling relying on a 1993 Indiana Supreme Court case that said courts could not interfere with the operation of the state legislature.

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Citizens Action Coalition (CAC) mission is to initiate, facilitate and coordinate citizen action directed to improving the quality of life of all inhabitants of the State of Indiana through principled advocacy of public policies to preserve democracy, conserve natural resources, protect the environment, and provide affordable access to essential human services. CAC is dedicated to protecting ratepayers and advocating for affordable healthcare and a clean environment. CAC does this through canvassing, lobbying, community organizing and litigation. **Contact Lindsay Shipps (812) 340-4242**

Common Cause Indiana is a nonpartisan grassroots organization dedicated to upholding the core values of American democracy. We work to create open, honest, and accountable government that serves the public interest; promote equal rights, opportunity, and representation for all; and empower all people to make their voices heard in the political process. **Contact Julia Vaughn (317) 432-3264**

Energy and Policy Institute is a pro-clean energy think tank working to expose attacks on clean technology and counter misinformation by fossil fuel and utility interests. The Energy and Policy Institute exposes attacks and deception by fossil fuel corporations, utility interests, and front groups through investigative research, analysis, and strategic communications. By disseminating our information through media, allies, and decision makers, Energy and Policy Institute seeks to disrupt fossil fuel-funded misinformation, separate polluters from policymakers, and accelerate the transition to a clean economy. **Contact Matt Kasper (630) 908-9615**