

# Sunshine is bright this month

Public-info advocates scored major win in the courts, say

James Ho and Ashley Johnson

By James C. Ho and Ashley E. Johnson



Every year in March, Americans celebrate Sunshine Week to renew our commitment to open government. This March, Texans have had new reasons to cheer.

First, state legislators in Austin abandoned a proposal to weaken public notice laws — in response to an outcry of concerns about due process, property rights and open government.

But that's not all. Late last week, public-information advocates scored another major win, this time in the courts.

Over a year ago, a small group of local officials filed a lawsuit claiming that the Texas Open Meetings Act violates their First Amendment rights. On Friday, Judge Robert Junell issued a comprehensive 37-page opinion rejecting their claims.

These local officials claim they don't oppose open government.

But make no mistake. Under their view, elected officials enjoy a First Amendment right to conduct official public business in private. In their world, officials would vote in public — but only after conducting their discussions, deliberations and deal-making secretly.

This kind of “meeting before the meeting” is precisely what the Texas Open Meetings Act was designed to combat. It states that any public business involving a quorum of public officials must be discussed in public.

The plaintiffs say the act violates the First Amendment. But that turns the Constitution on its head.

You don't need to be a legal scholar to know that the First Amendment protects citizens against government oppression — not government against citizen oversight.

There's a fundamental difference between forbidding people from speaking and requiring officials wishing to speak to do so in public. Restrictions on speech are presumptively unconstitutional. But disclosure requirements for public officials are profoundly American.

Open-meeting laws further, rather than frustrate, First Amendment values. In fact, courts have repeatedly invoked the First Amendment to guarantee public access to certain proceedings. The Constitution does not forbid what in many contexts it actually requires.

Tellingly, what the plaintiffs actually challenge is not the act itself, but only its criminal provisions. In other words, they don't claim that the First Amendment forbids open government — just the most effective way of accomplishing it. So it's no wonder their challenge has been rejected.



The plaintiffs say they will appeal. But that's not a good use of public resources. Every court in the nation that has ever addressed a First Amendment attack on an open-meetings law has rejected the lawsuit and upheld the law.

Only a small minority of Texas officials agreed to file this suit. But even they should not have done so.

After all, local officials should support the Open Meetings Act — not only because open government is good government, but also because the act protects officials as well as ordinary citizens. No official wants to be excluded from discussions by a majority of their colleagues.

Local officials who oppose the lawsuit should proudly — and publicly — say so.

The lead plaintiff in the case is Diana Asgeirsson of Alpine. She is joined by Angie Bermudez, James Fitzgerald and Johanna Nelson, also of Alpine; Jacques DuBose of Boerne; Jim Ginnings of Wichita Falls; Victor Gonzalez of Pflugerville; Russell Jones of Sugar Land; Mel LeBlanc of Arlington; Lorne Liechty of Heath; Todd Pearson of Rockport; Arthur Reyna of Leon Valley; Charles Whitecotton of Whitesboro; Henry Wilson of Hurst; and Kevin Wilson of Bellmead.

Perhaps Texans can persuade these officials not to lend their names to any appeal. Their official mailing addresses are available to the public. Their official deliberations should be available to the public, too.

*James C. Ho & Ashley E. Johnson are attorneys at Gibson, Dunn & Crutcher in Dallas. Ho defended the Texas Open Meetings Act when he served as solicitor general of Texas and advises media companies regarding pending legislation. His email address is JHo@gibsondunn.com. Johnson has represented local officials who support the act. Her email address is AJohnson@gibsondunn.com.*