YOUR RIGHT TO KNOW / CHRISTA WESTERBERG

Abrahamson let the sunshine in

As Justice Shirley Abrahamson ends her tenure on the Wisconsin Supreme Court, after 43 years and more than 1,300 authored opinions, she leaves a rich legacy of legal scholarship, importantly including her support for government transparency.

While on the court, Abrahamson faithfully applied the presumption in favor of public access in the open records and meetings laws. She authored or joined dozens of opinions affirming the law’s [stated policy](https://docs.legis.wisconsin.gov/statutes/statutes/19/II/31?view=section) that “all persons are entitled to the greatest possible information regarding the affairs of government and the official acts” of government officers and employees.

For example, she wrote the majority opinion in [Milwaukee Journal Sentinel v. City of Milwaukee](https://caselaw.findlaw.com/wi-supreme-court/1604656.html), a 2012 ruling that barred records custodians from charging requesters for the cost to redact (black out) records. Not only were such charges prohibited by statute, Abrahamson said, but “increasing the costs of public records requests for a requester may inhibit access to public records and, in some instances, render the records inaccessible.”

Abrahamson’s opinions also recognized Wisconsin’s strong tradition of open government. In a [2010 case](https://www.wicourts.gov/sc/opinion/DisplayDocument.pdf?content=pdf&seqNo=52285), she quipped, “If Wisconsin were not known as the Dairy State it could be known, and rightfully so, as the Sunshine State.”

Abrahamson frequently dissented from opinions that limited access. She was a strong critic of [two](https://www.leagle.com/decision/1995902192wis2d7101863) [opinions](https://caselaw.findlaw.com/wi-supreme-court/1294964.html) in the late 1990s that permitted individuals identified in records to seek to block disclosure. She wrote: “I dissent because the majority and concurring opinions rewrite the open records law, do away with the legislatively created ‘presumption of complete public access’ to public records and severely damage the core function of the open records law.”

The Legislature [narrowed](http://wisfoic.org/april-new-law-improves-records-access/) the court-created loophole a few years later.

Abrahamson also advocated for transparency within the Supreme Court itself. In 2012, she [opposed](https://www.wisconsinwatch.org/2012/02/supreme-court-opts-to-close-some-meetings/) its 4-3 decision to close some of the court’s rules and operations conferences to the public. In 2017, she was in the 5-2 minority that [closed](https://www.jsonline.com/story/news/2017/06/22/wisconsin-supreme-court-votes-keep-more-meetings-behind-closed-doors/417953001/) all such conferences.

In addition, Abrahamson can take some credit for the existence of the Wisconsin Freedom of Information Council, the statewide group on which I serve.

In 1977, a joint committee of the media and the State Bar was created to study openness in legal venues. The committee invited Abrahamson, then a newly appointed member of the state Supreme Court, as its inaugural speaker. Council founding member Dave Zweifel recalls her advising that if openness in Wisconsin was to be protected and improved, the press needed to become better organized and more proactive.

Soon after, Wisconsin news organizations began meetings that led to the council’s creation in October 1978. Its first major accomplishment was to work with the state Supreme Court to make Wisconsin one of the first states to allow cameras in the courtroom.

Says Zweifel, “I credit Shirley for being the catalyst [of] what became a new era for open government in Wisconsin and remains highly effective to this very day.”

Fittingly, Abrahamson spoke at the Council’s 30th anniversary event in 2009. She concluded her remarks with a quotation from U.S. Supreme Court Justice Louis Brandeis that “sunlight is said to be the best of disinfectants.”

As Abrahamson concludes her time on the bench, she might be known, and rightfully so, as the Sunshine Justice.

*Your Right to Know is a monthly column distributed by the Wisconsin Freedom of Information Council (*[*wisfoic.org*](http://wisfoic.org/)*), a group dedicated to open government. Christa Westerberg, an attorney at Pines Bach law firm in Madison, is the group’s co-vice president.*

**

Christa Westerberg