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**Statement by Gregory V. Sullivan,
General Counsel to Union Leader Corporation
and the New England First Amendment Coalition
to the House Criminal Justice and Public Safety Committee
Regarding House Bill 471**

February 10, 2021

My name is Gregory V. Sullivan and I serve as General Counsel to Union Leader Corporation and the New England First Amendment Coalition. I write to the Committee today to address a specific concern that the New Hampshire Chiefs of Police raised in their oral testimony on the bill. To be clear, we feel that the bill requires no amendment.

The New Hampshire Chiefs of Police specifically expressed concern that an officer would be forced to argue for a hearing to be closed in public and would, therefore, have to publicly disclose the information in which confidentiality is sought. This concern is unfounded. The language in House Bill 471 is similar to how court proceedings are conducted.[1] I have practiced law in New Hampshire for over 40 years. In court proceedings, a party seeking confidentiality submits information to the court "under seal"—outside the public's view—along with a motion to seal explaining the purported confidentiality, whereby the court is given an opportunity to review whether court records should be sealed or whether portions of court proceedings implicating this information should be held outside of public view.[2]

Nothing in House Bill 471—which is modeled after the standard used in judicial proceedings—prevents the same process from occurring in police decertification proceedings. The officer could ask the Police Standards and Training Council to review information privately to

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[1] *See In re Keene Sentinel*, 136 N.H. 121, 128 916 (1992) ("Under part I, article 8, the public has a right of access to court proceedings and to court records which cannot be 'unreasonably restricted.' We hold that under the constitutional and decisional law of this State, there is a presumption that court records are public and the burden of proof rests with the party seeking closure or nondisclosure of court records to *demonstrate with specificity that there is some overriding consideration or special circumstance, that is, a sufficiently compelling interest, which outweighs the public's right of access to those records*.").

[2] *See* N.H. R. Crim. P. 50(d)("No confidential document or document containing confidential information shall be filed under seal unless accompanied by a separate motion to seal consistent with this rule.").

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assess whether the information is confidential. If the Council determines that the information warrants confidentiality, then that information and/or portion of the hearing implicating this information—and *only* that information and *only* that portion of the hearing—remains confidential (the decision would be public *without* identifying the information). And if the Council determines that the information does not warrant confidentiality, then obviously that information and/or portion of the hearing implicating that information would become public. This process is inherent in House Bill 471, just as it is inherent in court proceedings because, otherwise, the bill's limited confidentiality protections would be meaningless.

In addition, a question was raised as to whether language should be added to the bill to protect "privileged" information. No amendment to the bill is necessary because, under New Hampshire law, the term "confidential" in House Bill 471 subsumes any information that may be "privileged." *See N.H. Right to Life v. Dir., N.H. Charitable Trs. Unit*, 169 N.H. 95, 104-105 (2016) (holding that attorney work product was protected "confidential, commercial, or financial information" under RSA 91-A:5, IV; "attorney work product, like communications protected by the attorney-client privilege, falls within the Right-to-Know Law exemption for 'confidential' information").

For these reasons, I do not believe that an amendment to House Bill 471 is necessary, and I ask that this Committee vote "ought to pass" on House Bill 471 as it is written.