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Statement by Gregory V. Sullivan,
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to the House Criminal Justice and Public Safety Committee
regarding House Bill 471
February 6, 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 submit this written testimony in support of the passage of House Bill 471. For over 150 years Union Leader Corporation has been committed to advancing and protecting the constitutional values of a free press and the public's corresponding right to know what its government is up to. The New England First Amendment Coalition is a non-profit coalition of journalists, attorneys and concerned citizens all dedicated to advancing transparency and accountability in government. The hearings conducted by the New Hampshire Police Standards and Training Council, (hereinafter "NHPSTC" or "the Council"), regarding certification and/or decertification of officers are currently held in private unless an officer requests otherwise. That practice violates the clear dictates of both the Constitution of New Hampshire, Part I Article 8, and RSA 91-A, the Right to Know law. Those important hearings should be subject to the same rules applicable to the hearings and records of our court system, and of the other disciplinary hearings relative to judges, lawyers, doctors and nurses.

Last year in creating the Commission on Law Enforcement Accountability, Community and Transparency, Governor Sununu recognized a "nationwide



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conversation regarding law enforcement, social justice, and the need for reforms to enhance transparency, accountability, and community relations in law enforcement”. The light of public scrutiny is as important, if not more important, when the certification or decertification of police officers entrusted with powers of the use of force and arrest is at issue. Transparency and accountability are critical to promote trust between citizens and the police during these turbulent times.

The fundamental purpose of New Hampshire’s Right-to-Know law is “...to provide the utmost information to the public about what its government is up to.” The exemption that the NHPSTC traditionally has relied upon to keep decertification hearings secret is R.S.A. 91-A, A:3, II (c) claiming that such matters “if discussed in public, would likely affect adversely the reputation of any person other than a member of the public body itself...” The Council’s claim of privacy when dealing with a police officer’s performance of his or her official duties must always be balanced against the public’s right to know what the government is up to. In New Hampshire a public body always bears the burden of proving that it may hold a non-public assembly of its members. Ettinger v. Town of Madison, 162 N.H. 785(2011).

In 2020 the Supreme Court of New Hampshire in the cases of Union Leader Corporation, et al v. Town of Salem, Seacoast Newspapers, Inc. v. City of Portsmouth, and Marianne Salcetti v. City of Keene made it clear that the privacy interest of police officers regarding the performance of their official duties is either minimal or non-existent.



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In any event whenever a particular officer seeks closure of any decertification hearing the Council must employ the traditional balancing test as directed by the Supreme Court and in use now for decades by courts and public bodies. See Union Leader v. City of Nashua 141 N.H. 473 (1996). The elements of that test are simple and are outlined as follows:

1. is there a privacy interest at stake?
2. assess public interest in disclosure
3. balance public interest against government's interest in nondisclosure and an individual's privacy interest

See Professional Firefighters v. Local Gov't Ctr, 159 N.H. 699 (2010)

The public's interest in police misconduct is always at an extremely high level. An individual officer's expectation of privacy regarding the performance of his or her official duties cannot reasonably be expected to outweigh the presumption of openness mandated by constitutional and statutory law. As Justice Schulman of the Superior Court wrote in the case of Union Leader Corporation, et al v. Town of Salem, "bad things happen in the dark when the ultimate watchdogs of accountability – i.e. the voters and taxpayers – are viewed as alien rather than integral to the process of policing the police."

Although my clients and I firmly believe that the current law of New



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Hampshire mandates open hearings by NHPSTC, House Bill 471 will certainly put to rest the possibility of future hearings being wrongfully conducted in private, while at the same time offering protection for certain instances where closure is warranted.

Thank you for the opportunity of presenting this testimony.