

**STATEMENT OF THE FREEDOM OF INFORMATION COMMISSION ON
RAISED BILL NO 605, AN ACT CONCERNING JUDICIAL BRANCH
OPENNESS**

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Good Afternoon Senator McDonald, Representative Lawlor and members of the committee. I am Colleen Murphy, the Executive Director and General Counsel of the Freedom of Information Commission. I would like to comment favorably on SB 605, An Act Concerning Judicial Branch Openness.

Most of my testimony will be directed to Section 13 of the bill. One week ago, I testified in support of a similar proposal contained in HB 5528, An Act Concerning the Freedom of Information Act, a bill sponsored by the Freedom of Information Commission. Section 13 would define the term "administrative functions" within the FOI Act, as it applies to the judicial department. It continues to be the FOI Commission's belief, despite the well-intentioned and positive reform efforts by the judicial branch to shine light on the courts, that legislation is essential to guaranteeing greater transparency of the judicial system. And, the best legislative approach would be to amend the definition of administrative functions, thereby carving out those matters that are not part of the adjudicatory or judicial functions of the courts, and ensuring that such matters will be open to the public. Without a definition, we will continue on the path that has been traveled for the past three decades. The courts will provide their own definition on a case-by-case basis and will modify it to suit particular needs or concerns. That has led to some confusing results, particularly evident in the most recent and well-known case, Clerk v. Freedom of Information Commission, 278 Conn. 28 (2006), wherein the Supreme Court determined that basic docketing information contained on the court's computer system was not "administrative" and could not be accessed pursuant to the FOI Act.

The proposed definition contained in Section 13. provides:

"administrative functions", means (i) all matters not directly related to judicial decision-making in individual cases and (ii) those matters that relate to the management of the internal institutional machinery of the judicial branch, including, but not limited to, budgeting, accounting, rule-making, personnel, facilities, physical operations, docketing and scheduling.

The proposed language incorporates what the Supreme Court has pointed to in cases prior to the Clerk decision as the kinds of matters that are encompassed by the term "administrative functions," and also includes the kind of information that was at issue in Clerk, but found not to be subject to the FOI Act. It is the Commission's view that none

of the items set forth in the proposed definition would impinge on the judicial functions of the court.

I would also like to favorably comment on the numerous other provisions of the bill that cast rays of sunlight on the Judicial Selection Commission and the Judicial Review Council. For example, with respect to the Judicial Selection Commission, lines 236-243 require the establishment of, and posting on, an internet web site, of the Commission's address, telephone number and application process; lines 244-246 require posting of notice of meetings, absent information that would identify candidates; and lines 323-326 require the tally of votes on incumbent judges to be public. And with respect to the Judicial Review Council, lines 539-553 require the establishment of, and posting on, an internet web site, of the Council's address, telephone number and information about the operations and jurisdiction of the Council; lines 573-574, require the publishing of advisory opinions; and lines 667-669 require that admonishments be a matter of public record. Both the Judicial Selection Commission and the Judicial Review Council are extremely important bodies entrusted with very significant responsibilities in reviewing candidates who will serve the Judiciary and the Workers Compensation Commission, and in reviewing judicial conduct, respectively. Any greater openness by these bodies will increase public trust in the processes they carry out.

Finally, the FOI Commission seeks a word change at line 688, Section 6 of the bill. The request is to change the word "shall" to "may." This section states that the record of the proceedings before the Judicial Review Council shall be open to the public, after a finding of probable cause. At present, the language *requires*, by use of the word "shall", that information that is permissively exempt under the FOI Act under Conn. Gen. Stat. 1-210(b), *must* be withheld from the public. Changing the word to "may" will ensure that, consistent with the permissive exemptions contained in the FOI Act, such records can be withheld, but may be disclosed if a determination is made that disclosure would be appropriate in a given case.

In closing, thank you for the opportunity to testify concerning this important bill before you that will potentially have a meaningful impact on the transparency of the judicial system. I am happy to answer any questions you may have.