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Testimony before the Appropriation Committee

Connecticut General Assembly

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Good morning. My name is Rosanna Cavanagh. I am an attorney and the Executive Director of New England First Amendment Coalition, a non-profit organization working in the six New England states to defend and promote public access to government and the work it does. I appreciate the opportunity to comment on the proposed changes to the Office of Government Accountability offered by the administration of Governor Dannel Malloy.

I would like to begin this morning by pointing out that throughout the past decades, Connecticut's independent Freedom of Information Commission has been a model for New England, our nation and even our world. Former Freedom of Information Commission Chairman Mitchell Pearlman has advised in over 20 countries including Tunisia, China, Canada, Mexico, Peru, the United Kingdom, Ireland, Australia, New Zealand, Singapore, Hong Kong, France, Sweden, Slovakia, Armenia, South Africa, Jamaica, Jordan, Turkey, Bahrain, Bulgaria, India, Kenya, Nigeria, Zambia, Ecuador, Vietnam, Morocco and Germany on setting up effective freedom of information regimes due to his experience in Connecticut. As a close neighbor of Connecticut in Rhode Island, I can tell you I have heard countless times from citizens and open government advocates, "if only we could have the commission that Connecticut has" then we could have some hope for openness. Something so exemplary about the state's democracy, which has been the aspiration of so many other states and countries, which has doubtless helped it uncover and root out countless issues of fraud, should not be thrown away for the cost of a few hundred thousand dollars, a cost that would be more than swallowed by a major fraud that goes undetected as a result of a weaker watch dog regime, and a cost that can easily be saved without the changes to the structure and authority of the agencies proposed here.

The current proposal of the Malloy administration to make all of the watch dog agencies answerable to a political appointee of the governor, taking away their budgetary independence and merging together legal staffs trained on separate and distinct legal frameworks should be recognized for what it is: a political power play. Why else would the government take away the

independence of the agencies whose job it is to ensure government accountability when the savings would easily be generated by simply asking the heads of the agencies to put their heads together and come up with a way to make the same level of savings.

The last reorganization of the nine watchdog agencies which resulted in creation of the umbrella Office of Government Accountability, as worrisome as it was, maintained certain safeguards in order to prevent the evisceration of the watchdog agencies' independence, resources, and ability to be effective enforcement regimes. Among these safeguards were the ability to of agencies to recommend their own budgets to the legislatures, the ability to fire the administrative overseer whose appointment presumably was to allow better coordination of backroom functions, adequate staffing to ensure the essential functions of the watchdog agencies remained, and independence from the governor's office.

Particularly problematic with this proposal is the transfer of all legal staff to one new department, the Office of Hearings. It seems illogical and is sure to be costly to undergo a massive cross training of specialized lawyers on vast and new areas of law. Sec. 131 (b)(4) calls for the "executive administrator of the Office of Governmental Accountability to develop and implement a program for continuing education of attorneys..." This program could easily swallow up any savings generated by this reorganization. More importantly, the consolidation of legal departments of watchdog agencies creates conflicts of interest. The Day of New London pointed out aptly: What if FOI was demanding information that Ethics considered exempt from disclosure? Or if Ethics was investigating misconduct at Elections Enforcement? Wouldn't these be unsurmountable conflicts impossible to address by lawyers who are all working together under one head accountable to the governor.

We have to recognize, hopefully sooner rather than later that "the Emperor has no clothes." Making an independent FOI commission answerable to a political appointee is nothing short of killing it. Taking away all the lawyers from the State Ethics department so they can not advise on ethics laws, destroys it. Taking away the environmental analyst from the Council of Environmental Quality won't allow effective environmental enforcement. These actions are nonsensical unless the goal is to eviscerate the ability of these watch dog entities from effectively doing their jobs. As Colin McEnroe wrote, "for less than \$200,000 [the government] is prepared to sell out a major tenet of democracy."

These watchdog agencies' roles in preventing corruption are invaluable. Only need to look next door at Rhode Island to see why too much connection between the enforcer of freedom of information laws and the government that is circumscribed by these laws is problematic for rigorous enforcement. In a report issued by the Rhode Island ACLU last month, it is found that in 13 years, almost half of the complaints that were brought to the Attorney General's attention for resolution led to findings of violations. Yet the AG filed lawsuits against public bodies on only six occasions, less than 4% of the time. Even in the most blatant violations, there was

rarely action by the Attorney General. In one recent instance, the same public body, the Town of North Providence, was found to have violated APRA six times within a 2 year period. Yet even after sixth violation no penalties were sought under the law. Let's keep Connecticut's independent Freedom of Information Commission what it needs to be to continue to be the aspiration of other transparency seekers in our country and our world, in a word, let's keep it independent.