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**TESTIMONY OF SHELDON TOUBMAN BEFORE THE APPROPRIATIONS
COMMITTEE IN OPPOSITION TO HB 6353 and 6354, WHICH WOULD
UNDERMINE CRITICAL GOVERNMENT ACCOUNTABILITY**

Senator Harp, Rep. Walker and Members of the Appropriations Committee:

My name is Sheldon Toubman and I am an attorney with New Haven Legal Assistance Association. I have represented Medicaid clients for over two decades. My organization also is a member of CT Advocates for Accountable Government, a broad, recently formed coalition of non-profits dedicated to improving the openness and accountability of state and local government in Connecticut. The Coalition formed in response to the steady erosion of the public's access to information about the government it elects and funds. The coalition's mission is two-fold: to combat efforts to reduce transparency and accountability, and to promote initiatives that restore Connecticut's place as one of the most open governments in the United States.

I am here to testify in opposition to two harmful bills, HB 6353 and 6354, which together would decimate the independent watchdog agencies which are essential to ensuring transparency and accountability in government and governmental programs. We have more than a passing interest in this on behalf of our low-income clients, because one of the important ways that we as advocates protect clients dependent on these programs is to obtain internal governmental documents which underlie any proposed changes, or refusals to change, these programs. The way we do this is through submission of Freedom of Information Act requests, particularly to the Department of Social Services.

It is often difficult to obtain the documents we request under the FOIA both because the agencies have other priorities than responding to such requests, which often are perceived as a nuisance, and because, in some cases, the documents requested are politically sensitive and may tell a story different from the one that the agency is telling through its official spokespeople. Because of this, we sometimes have to resort, if all else fails, to threats to appeal the non-compliance to the FOI Commission. This is almost always successful in shaking the responsive documents, because state agencies know that the FOI Commission has a reputation as an aggressive enforcer of the FOIA, even when it is politically sensitive documents which have been sought.

HB 6353 and 6354 would have the direct affect of eviscerating the FOI Commission and the other watchdog agencies currently nominally within the Office of Governmental Accountability (OGA) for administrative purposes only. For example, HB 6353, Section

3, would give power over the FOIC's budget to the Governor's Office, by replacing the current statutory language about these watchdog agencies having independent authority concerning decisions regarding "budgetary issues" with language providing that they would have such authority "within the amount appropriated to each office." And Section 5 newly provides that the "Governor may reduce allotment requisitions or allotments in force concerning the Freedom of Information Commission" (identical language is proposed regarding the Office of State Ethics and the State Elections Enforcement in, respectively, sections 4 and 6). It is no secret that taking away a watchdog agency's financial independence is the best way to take away its independence to investigate other state agencies and that is exactly what would be accomplished here.

Similarly, while 6353 theoretically preserves the independence within the OGA of the Office of the Child Advocate regarding its budget, by stating that it and other agencies have independent authority "within the amount appropriated" to that office, this is completely illusory in practice where, as here, the amount the Governor has proposed to appropriate for that office is **zero**. The actual effect of this language is that the Office of the Child Advocate would be completely dependent on OGA, and thus the Governor's office, for its funding, undermining its ability to be an independent watchdog over such agencies at DCF.

But, as threatening as this bill is to the independence of the watchdog agencies, HB 6354 is arguably even worse. Under Section 131(b)(3) of this bill:

Notwithstanding any provision of the general statutes, each full-time employee or permanent part-time employee of the boards, commissions or council set forth in subdivision (1) of this subsection, including, but not limited to, those who are staff attorneys or hearing officers, and those whose primary duties (A) are to investigate complaints, conduct hearings in contested cases and issue final decisions or proposed final decisions, or (B) relate to providing administrative services required for conducting such hearings and issuing such decisions, shall be transferred to the legal and enforcement division within the Office of Governmental Accountability. (emphasis added)

And Section 131(b)(5) then provides that, with the exception of initially having to take in all of the staff of the independent agencies, "the executive administrator [of the OGA] shall make hiring decisions concerning the staff of the [new] legal and enforcement division" within the OGC.

Since the executive administrator of the OGA reports to OPM and the Governor, what this really means, in stark terms, is that all of the dedicated lawyers and investigators who make the various watchdog agencies what they are today, and allow them to be independent, will have no ability to do **anything** except if a request for assistance from them is made through their superior -- who effectively reports to the Governor. It will turn the FOIC and the other independent agencies into toothless, ineffective agencies which

other state agencies will no longer fear as serious enforcers of the FOIA and other critical accountability legislation.

To tie this all together, here is a recent example of the important accountability role of the FOIA and the FOI Commission which will become a thing of the past if these two anti-accountability measures are passed. Recently, the Governor pushed for a special waiver which allow it to cut about 13,300 low income individuals from the Medicaid Low-Income Adult program. In pushing the legislature, successfully, to agree to mandate the filing of a request for such a waiver with the federal Medicaid agency, CMS, OPM publicly said that this change would save about \$50 million, a lot of money for a state in substantial deficit. However, unsure where this high figure came from and what was really motivating the proposal, we submitted a request through OPM for all internal OPM correspondence and all correspondence with DSS concerning the proposal.

It took some trouble to get the documents but we did and what we discovered from internal e-mails was rather shocking: not only was it clear that OPM was pushing this proposal despite DSS officials' making it clear that they just could not handle the changes, but the original \$30 million savings figure was "was really grabbed out of the air" and this figure was then unilaterally increased by OPM "to \$50 million without any detailed analysis to support this figure." We also found correspondence with DSS in which DSS staff raised concerns about the additional **costs** of implementing the proposed waiver.

In other words, while OPM was insisting to legislators and the public that the legislature **had** to adopt its proposed waiver as critical to save this amount of money, internally, OPM acknowledged it simply made up the number and DSS, the agency which actually runs the Medicaid program, was raising a raft of concerns about both negative programmatic impacts and costs to the state. There was no other way to obtain this revealing information besides the FOIA. Although this information came out too late to inform the legislature, it was brought to the attention of CMS, which denied the waiver.

If, as under these two harmful bills, the FOIC has no staff of its own and no real independent budgeting authority, and it has to go **to OPM** for its budget and to **ask** OGC, which reports to the OPM and the Governor, for any help from attorneys, investigators and other staff, it is apparent that the FOIC would be unable to enforce any non-compliance with the FOIA by OPM itself. Under these circumstances, the FOIA request in this case would never have been effective, with no means to enforce it, and this kind of problematic advocacy by a governmental advocacy seeking to make harmful changes to a safety net program would never have come to light.

For all the reasons legislators and the public believe in accountable government, including an accountable executive, the independence of the FOIC and the other watchdog offices within the OGC must be preserved. Adopting these provisions would send us in the exact wrong direction, so I respectfully urge you to reject them.