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VIA EMAIL

Special Committee on Health, Opportunity, Prosperity, and Education
Providence City Council
City Hall
Providence, RI 02903

Re: The Providence Rent Stabilization Act

Dear Members of the Special Committee on HOPE:

The American Civil Liberties Union of Rhode Island appreciates the opportunity to submit testimony on this important, if controversial, proposed ordinance. The ACLU of RI has no position on the general topic of rent stabilization or many of the aspects of implementation that are included in the proposed ordinance. However, we do wish to raise two particular issues about the proposal, and hope that they will be given your careful and favorable consideration.

The first involves the ordinance's creation of a Residential Rent Regulation Board. That board is given broad powers, including "full authority to implement, interpret, and enforce this article, adopt necessary administrative procedures, forms, and standards, and delegate tasks for efficient operations." Sec. 13-70(d). Another section of the ordinance, Sec. 13-72(e), further expands upon the regulatory powers of this board. It is clear from the description of this entity that it is designed to have significant authority in the implementation and operations of this major initiative through its rulemaking powers. However, the ordinance does not, in our view, provide adequate assurances for the requisite public involvement and oversight in rulemaking that such an important and powerful administrative body should be subject to.

The only reference to Board procedures appears in Sec. 13-89(a), which simply provides that proposed rules "shall be promulgated after a hearing, at which interested persons may present written and oral comments." We would highly recommend that the ordinance be amended to establish and codify a much more robust process for the Board's rulemaking activities. Specifically, we believe it would be appropriate to have the Board abide by procedures similar to those followed by state agencies under Rhode Island's Administrative Procedures Act, R.I.G.L. 42-35-1 et seq.

This would include specifying in the ordinance a reasonable time period of advance notice of the Board's proposed rulemaking, meaningful dissemination and posting obligations so that individuals are made aware of upcoming rulemaking proceedings, and an opportunity for members of the public themselves to propose the adoption or amendment of rules for the Board's consideration. None of these obligations is particularly onerous, but they would ensure a more open process for public participation.

Second, we have concerns about one provision in the proposed ordinance's section addressing the issue of "retaliation." The ACLU strongly supports the thrust of this section, which is designed to prevent landlords from retaliating against tenants because of their exercise of rights guaranteed them under the ordinance or state landlord-tenant law. However, we believe that one provision in the list of forbidden activities raises significant First Amendment concerns and should be deleted.

Section 13-77(a)(2) defines "retaliation" to include "spreading false or misleading information about the condition of a dwelling unit, building, or a tenant's rights or obligations." Whether information provided by a landlord about a building's conditions is "misleading" (or even false, in the absence of malicious intent) will, in many instances, be a matter of opinion, and one that we do not believe can constitute unlawful retaliation leading to the imposition of penalties without raising free speech concerns. While Sec. 13-77 lists many other appropriate and legitimate grounds for tenant action should they be discriminated against for their own exercise of First Amendment rights, we believe this particular one is problematic and should be stricken from the ordinance.

Finally, we wish to note our endorsement of the provision in the ordinance giving the Board authority to enforce the city's recently enacted ordinance prohibiting the use by landlords of algorithmic rent setting devices. Section 13-77(e). The ACLU supported passage of that ordinance, and it is appropriate for this ordinance to authorize its enforcement by this new Board.

Thank you for your consideration of our comments.

Sincerely,



Steven Brown
Executive Director

cc: City Council Members
Tina Mastroianni, City Clerk
Jeffrey Dana, City Solicitor