AMERICAN CIVIL LIBERTIES UNION
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Testimony on 19-H 5037, House Resolution Adopting the Rules of the House of Representatives for the Years 2019 and 2020

January 8, 2019

The ACLU of RI appreciates the opportunity to submit testimony on these proposed Rules for the 2019-2020 session. Our testimony is divided into three parts. The first two address the major substantive addition to the Rules, new Rule 46, relating to sexual harassment and discrimination. We have both general and specific comments to offer on that section. The third part looks more generally at the Rules and offers some recommendations for rolling back some changes that have been made to the Rules over the years.

A. General Comments on Rule 46, "Sexual Harassment and Discrimination Prohibited"

The ACLU of RI applauds the House leadership's interest in making clear that sexual harassment at the State House will not be tolerated. While we therefore support efforts to establish an internal mechanism for investigating such complaints, we do not believe those efforts in and of themselves are sufficient. We wish to make three points in that regard.

1. House leaders have acknowledged that the R.I. Commission for Human Rights is currently available to legislative members as an avenue to pursue complaints of unlawful harassment. The ACLU agrees, but the Commission itself has expressed some doubts about its jurisdiction to address these particular claims. We therefore urge, as one of its first actions in 2019, that the House pass legislation making explicit the Human Rights Commission's independent authority to investigate harassment and other discrimination complaints emanating from the State House, whether from legislators or others. For any number of legitimate reasons, legislators, State House employees and interns may feel uncomfortable relying solely on an internal House process to file discrimination complaints. Passage of a bill clarifying the availability of the Human Rights Commission to accept and investigate those complaints is a critical supplement to any internal process established by House Rules.

2. The ACLU also believes it is essential that the House pass in quick order the package of bills that was proposed at the end of the 2018 session by the Special Legislative Commission to Study Unlawful Sexual Harassment in the Workplace. The bills were the subject of a thorough hearing and review process. To focus on adopting rules addressing harassment at the State House while ignoring the plight of the women and men sexually harassed on the job everywhere else makes a focus on State House harassment, as important as that is, seem more like a diversion. We hope that members of this Committee will actively push for passage of these important, already-vetted bills.

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3. In November, Rep. Blazejewski announced plans to introduce legislation that would establish a detailed procedure for addressing complaints of State House sexual harassment. While this Rules proposal may be a part of that effort, Rule 46 provides very little detail about how the new Office of Compliance that it references will work. We are thus limited in being able to provide informed input into the Rule. One thing we can note, however, is that based on the explanation provided by Rep. Blazejewski about his proposed bill, we are concerned about the actual independence of the process, something that the House Speaker has acknowledged is crucial to this internal procedure's success. The draft bill would appear to vest a great deal of power with the Joint Committee on Legislative Services (JCLS), a body controlled by the Speaker. Without ascribing ill motivations to it, the JCLS cannot be considered an independent body. Vesting much of the authority to deal with allegations of harassment with that committee, and not with a truly autonomous officer, undermines a major goal of the process.

B. Specific Comments on the New Section, "Sexual Harassment and Discrimination Prohibited"

Leaving those general comments aside, we also have a few very specific suggestions for the wording of new Rule 46, and those suggestions follow below.

1. Either delete lines 31-34 on Page 22, or amend as follows:

The House acknowledges that the question of whether a particular action or incident is of a purely personal or social nature, without a discriminatory employment affect, ~~requires~~ can sometimes require an extensive determination based on ~~all facts in each~~ the facts of the case. The House further recognizes that false accusations of sexual harassment can have serious effects on innocent individuals.

Explanation: As worded, this section inappropriately proclaims that allegations of sexual harassment are always factually complicated. Some are, some are not. The House should not pass language that suggests there is no such thing as a blatant act of sexual harassment.

2. Amend Page 23, lines 1-3 as follows:

(b) Sexual harassment is a violation of ~~Title VII of the Civil Rights Act of 1964~~ the State Fair Employment Practices Act, R.I.GL. §28-5-1 et seq., and The Civil Rights Act of 1990, R.I.G.L. §42-112-1 et seq. It is against the policy of the House for any person involved in the business of the House to sexually harass another person involved in the business of the House. The process for investigating complaints established by this Rule is not intended to supersede other avenues for relief authorized by state law.

Explanation: In recognizing that sexual harassment is illegal, we believe it is more appropriate for the Rule to be citing Rhode Island's own laws against discrimination, not the federal law (which actually contains a specific exemption for legislators). To avoid any doubt or

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confusion, the Rule should also make clear that this new internal investigatory process is a supplement to existing legal remedies.

3. Amend Page 23, lines 11-16 as follows:

All complaints shall be handled in a timely and confidential manner by the Office of Compliance. In no event shall information concerning a complaint be released by the Office or any person investigating a complaint on behalf of the Office to anyone who is not involved with the investigation. ~~No person involved shall discuss the subject outside the investigation.~~ The purpose of this provision is to protect the confidentiality of the person who files a complaint, to encourage the reporting of any incidents of sexual harassment and to protect the reputation of any person who may be wrongfully accused.

Explanation: The "gag rule" currently contained in Rule 46 – which would bar complainants from discussing their complaints publicly – is extremely problematic. No person claiming to be the victim of sexual harassment should be forced to waive her First Amendment rights in order to file a complaint with the Office of Compliance. In any other setting, such a prohibition would be clearly unconstitutional. We appreciate hearing through media reports that this was not intended, and we have therefore proposed language to clarify that.

C. General Comments on the Rules

We have gone back over the testimony we have submitted about House Rules changes over the past dozen years or so. Below is commentary about some of those changes about which we raised concerns at the time. In light of the calls for rules reform, we believe this is an appropriate time to reconsider some of these issues. We recognize that many people may have gotten used to them since their inception, and the abuses we warned against may not have come to pass. But these Rule changes often included, and continue to include, powers that should not be available in the first place. In that respect we believe these earlier objections remain valid and therefore warrant reconsideration. We revisit them below.

1. In 2015, the House adopted language, which currently appears within Rule 9 on page 4, eliminating a Representative's ability to remove items from the consent calendar for an individual vote. Instead, it is at the Speaker's complete discretion whether to allow the removal of bills for a vote (page 4, lines 11-12). We believe that this is an unfair restriction on legislators and their accountability to constituents. Representatives should not be effectively barred from recording themselves in opposition to a particular bill unless they are willing to also be recorded as voting against every other bill that is on that calendar. Recorded votes are among the most important measures of accountability, and they lose meaning if they can be buried among many other bills in one vote.

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It is true that bills are placed on the consent calendar only with the approval of the Speaker, Majority Leader, and the Minority Leader, but most bills transcend party labels, and a Representative should not be prohibited from having a recorded vote on a specific bill merely because the leaders of his or her party have decided against it. To the argument that bills placed on the consent calendar are often minor or duplicate pieces of legislation, that is all the more reason to respect a Representative's wishes on those few occasions when he or she may believe a separate vote on a bill is warranted.

2. Another amendment adopted in 2015 that remains codified in Rule 12(a)(1) on page 6 authorizes denial of a committee hearing on a properly introduced bill if it is introduced after "the hearing of a grouping of bills on the same subject matter." We believe this creates a great potential to undercut a Representative's legitimate right to have a committee hearing on a bill he or she has introduced. First, the term "same subject matter" is not defined and could indiscriminately encompass a wide array of bills. If the finance committee holds a hearing on a variety of tax bills, is any later-introduced bill relating to taxes potentially off limits for a hearing? If there is a hearing on bills to eliminate the sales tax, does a Representative lose their chance to have a hearing on a bill to raise it? We appreciate the intent behind this rule, but it fails to take into account the way it could inadvertently impose premature deadlines on bills. Since committees begin holding hearings on legislation even before the introduction deadline has passed, the possibility exists under this Rule that a Representative who introduces a bill within the initial deadline period could lose the right to a hearing on it.

3. Rule 12(b) on page 6, which was first adopted back in 2005, addresses committee consideration of bills that have not been previously distributed in print or electronically to its members. In order to promote the public's right to know, we ask that this rule be amended to make clear that members of the public also have a contemporaneous right to access such bills. The public's right to attend committee hearings and hear committee deliberations is obviously diminished significantly if people have no idea what is being discussed.

4. Rule 13(a) on page 9, also first adopted in 2005, provides that committee votes "shall be public records and available to any member and to any person upon written request." Now that committee votes are posted online, this provision is somewhat outdated. In any event, the requirement that such requests be in writing is burdensome and unnecessary. The Access to Public Records Act specifically provides that a public body cannot require written requests for documents "prepared for or readily available to the public," R.I.G.L. §38-2-3(d). Voting records would certainly fit in that category. We urge the House to abide by the spirit of that law by eliminating this requirement.

5. In 2009, the House adopted a rule change to what is now rule 14(a) on Page 10, creating a new exemption for bringing bills to the floor without committee consideration. Under the rules previously in effect, duplicate bills from the Senate could be brought directly to the House floor. The modification to the 2009 rules, which remains in this proposal, allows any Senate bill to be brought directly onto the House calendar at any time after the House has passed the budget. Thus,

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substantive legislation passed by the Senate – legislation that a House committee may never have even seen before – can be immediately brought to the House floor without any notice whatsoever to the public, without any committee consideration, and without any suspension of the rules.

It is worth noting that this change followed a similar problematic change to the House rules in 2007, when the rules were amended to create a new exemption for the timely posting of committee bills. Before 2007, the general two-day posting requirement did not apply to "House bills returned from the Senate with amendment..." Rule (12)(c). (Page 7, line 5). In 2007, the House rules added a new exemption, which remains twelve years later: "after the 50th legislative day, to any bill originating in the Senate." In short, under this change, a House committee can consider Senate bills at the end of the session without providing any notice to the public. We urge that these rules be eliminated, and that the pre-2007 rules be reinstated.

6. We have consistently and previously raised concerns about the shorter timeframe established in past years' Rules for allowing bills to be considered on the floor after passing out of committee. A two-day rule for consideration was replaced in 2005 with a very short one-day rule. By allowing a bill to be considered on the House floor after having been made available only at the rise of the previous legislative day, the opportunity for public review or input may be negligible. We recognize that the two-day rule was often waived during the hectic last days of the session, but we continue to see no reason why that should be applied throughout the session. Unfortunately, this problem is heightened by language in 15(d) on page 12, which provides that "The Legislative Council may decline to accept for drafting any proposal for an amendment submitted to it later than 3 p.m. on the day on which the bill or resolution to be amended is to be heard, provided that the speaker or his or her designee may waive this restriction," (page 12, lines 22-25).

No standards are given as to when legislative council "may" decline to accept amendments for drafting. More importantly, it can be very difficult for legislators, much less interested lobbyists or members of the public, to insure an amendment is prepared and submitted by 3 p.m. when the bill itself, which could be ten or twenty pages long, may only have been posted as a "Sub A" on the calendar late the night before.

In conclusion, we ask that some specific language changes be made to Rule 46, that this new Rule be part of a broader legislative scheme to provide remedies for sexual harassment at the State House and elsewhere, and that a review be undertaken of a handful of House rules that have been adopted in the past decade and which warrant reexamination.

The ACLU appreciates your consideration of these issues.