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ACLU OF RI POSITION: SUPPORT

TESTIMONY IN SUPPORT OF 24-H 7458, AN ACT RELATING TO FAIR EMPLOYMENT PRACTICES February 14, 2024

The ACLU of Rhode Island strongly supports this bill to help improve the remedies available to individuals who are the victims of discrimination in the workplace.

This legislation amends the definition of “employee” in RI General Laws §28-5-6(7) to expand the scope of protected persons to reflect today’s reality: that an increasing number of today’s employer-employee relationships are not captured by the conventional employment relationship, where instead many individuals performing employment-type duties are increasingly performed by paid or unpaid interns, apprentices, volunteers, and “contract employees.” Not only should these individuals have the same protections as traditional employees, they often have far less bargaining power and may be even more vulnerable to discrimination than the traditional employee. The redefinition would also commendably, and finally, eliminate the archaic and discriminatory exemption currently in the law for those engaged in “domestic service.”

Similar language appears in the Rhode Island Whistleblowers’ Protection Act, RI General Laws §28-50-2(2), which provides: “One shall employ another if services are performed for wages or under any contract of hire, written or oral, express or implied.” In §28-50-2(1) of the Whistleblowers’ Act, the language is even clearer that “employee” includes so-called

“independent contractors,” a status increasingly used by companies. The ACLU of RI therefore supports this revised definition.

This bill also amends the definition of “employer” in §28-5-6(8)(i) to expand the reach of the Fair Employment Practices Act (FEPA) to employers with one or more employees instead of the current four or more employees. This expansion is likewise in keeping with the goal of providing protections to all persons serving in an employment relationship. The current restriction of FEPA to companies with four or more employees means that those likely to be in the least structured and most vulnerable relationships, from the standpoint of the employee, and in the smallest businesses, from the standpoint of the employer, are foreclosed from access to the less expensive and confidential investigative and adjudicative processes of the Human Rights Commission, and are left with the only recourse of more expensive and immediately public court proceedings or none at all.

The expansion of jurisdiction of the Human Rights Commission to all Rhode Island employers, instead of those with four or more employees, is also consistent with the Workers’ Compensation Act, RI General Laws §§28-29-5 and 28-29-6, which was extended to reach all employers with at least one employee, instead of four or more, twenty-five years ago. This revision to FEPA is thus long overdue.

The ACLU urges passage of this important legislation.