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## **ACLU OF RI POSITION: OPPOSE**

### **TESTIMONY ON 24 -S 2098, AN ACT RELATING TO CRIMINAL PROCEDURE – TRIAL April 30, 2024**

The ACLU of Rhode Island strongly opposes this legislation, introduced on behalf of the Attorney General, which would give his office veto power over a criminal defendant’s current legal right to waive their right to a jury trial. We believe this legislation would undermine a basic principle of state law and the recognition that a defendant should have the right to have certain sensitive criminal cases heard by a judge rather than jury.

The case that prompted this bill is a perfect example of why defendants should have this critical right. The charge involved an alleged hate crime, the type of charge that can generate deep instinctual emotions among jurors which can weigh against a criminal defendant. When a criminal defendant is a virtual pariah in his or her community, the right to seek a trial before a neutral magistrate can be just as important as their countervailing right to be tried before a jury of their peers. In our view, the state’s vehement opposition to this option only proves the point. Why else demand that a person be tried before a jury against the defendant’s own wishes other than the belief that a conviction is more likely in that venue?<sup>1</sup>

Nor does the Attorney General deserve to have this power as a matter of “fairness.” Criminal defendants are bestowed certain rights – whether by Constitution, statute, or court rule – in recognition that fairness requires certain special protections for the defendant when facing the might and power of the State and the potential loss of liberty that follows from a criminal conviction. Allowing a defendant to waive their right to a jury without the approval of his adversary is no more unfair than requiring the prosecution to prove an offense “beyond a reasonable doubt” or giving defendants the right to a speedy trial and the right not to incriminate themselves.

Whether because of the nature of the defendant, the offensive nature of the alleged crime, the publicity surrounding a controversial case or the complexity of the facts, a criminal defendant should have the unfettered right to request a trial before a judge. It would be ironic to cite the fact that the jury system was set up as a bulwark to protect defendants from the power of the State as the reason to allow it to be employed by the State when it thinks it would help facilitate a conviction. The ACLU strongly urges the Committee to reject this legislation.

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<sup>1</sup> We will ignore as a reason for the bill the insinuations that were made by the Attorney General’s office that certain judges who heard jury-waived cases were more likely to be lenient towards defendants. The data demonstrated otherwise, and it was a troubling argument in the first place.