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ACLU OF RI POSITION: OPPOSE

TESTIMONY ON 24-S 2473, RELATING TO WORKPLACE PSYCHOLOGICAL SAFETY ACT March 20, 2024

The ACLU of Rhode Island appreciates this bill's intent to bring some well-deserved civility to the workplace, but we have significant concerns about its scope and its legality. Unfortunately, we believe the legislature can only go so far in trying to regulate civility.

It is difficult to legislate a workplace civility code because First Amendment and due process concerns arise when attempting to address by statute the types of routine personal interaction that this bill seeks to regulate. The terminology used in this bill as to what constitutes "psychological abuse" and an employer's legal obligation "to ensure that all employees are treated respectfully" is, in our view, hopelessly vague. In light of the serious legal consequences that flow from engaging in this activity, we do not believe it can withstand constitutional scrutiny. That is especially the case since the "conduct" being regulated would often encompass purely verbal speech, a core element of First Amendment protection.

Even in the specific context of sexual harassment, the U.S. Supreme Court has held that only severe or pervasive actions which adversely affect the work environment are prohibited. Yet this bill would subject an employer to significant legal liability for allowing another employee to "confuse" a person emotionally. It would paradoxically designate as "physical injury" an alleged impairment to physical health that is not manifested physically. It would deem a "toxic work environment" any condition that a reasonable person would find "difficult" or "uncomfortable" to work in. While we might all yearn for a working environment that is never difficult or uncomfortable, imposing steep civil penalties against an employer for failing to maintain such an environment is deeply problematic.

Ultimately, we believe that the breadth and vagueness of this bill's standards run afoul of free speech and due process constitutional obligations. For these reasons, the ACLU is constrained to oppose this legislation. Thank you for considering our views.