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ACLU OF RI POSITION: OPPOSE

TESTIMONY ON 22-S 2486, RELATING TO DIGNITY AT WORK ACT March 9, 2022

The ACLU of Rhode Island appreciates the concept of this bill, which is designed to bring some well-deserved civility to the workplace, but we have significant concerns about its scope and its legality. Unfortunately, we believe the law can only go so far in regulating 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. What one person might consider “humiliating” verbal comments, another could view as legitimate employer or colleague criticism. To give another example, employees – and employers – are certain to have differing views as to when a level of supervision becomes “overbearing” and hence illegal under this bill. However, this legislation would put employers and colleagues at serious risk of liability when engaging in conduct that would be the subject of legitimate differing points of views and that, to the extent that pure speech is involved, could also be entitled to constitutional protection.

Without attempting to diminish the serious impact of workplace bullying, we note that the fact that an “infringement upon the right to dignity shall be assessed by the impact the behavior has on the recipient” means that an employer or colleague may face liability based solely on how thin-skinned a particular employee is. Even in the specific context of sexual harassment, the Supreme Court has held that only severe or pervasive actions which adversely affect the work environment are prohibited. When the alleged misconduct encompasses purely verbal behavior devoid of clear, actual harm to the working environment, the definition of harassment must be restricted in order to avoid encroaching on free speech rights and must provide meaningful guidance and notice as to what is and is not permitted.

It is also worth noting that the bill’s extensive liability provisions appear to be broader than those contained in the Fair Employment Practices Act, the key decades-old statute that addresses employment discrimination on the basis of race, sex, religion and other protected categories.

Ultimately, we believe that the breadth and vagueness of the bill’s standards would 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.