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Senate Bill 1044
An Act Concerning Discrimination

Judiciary Committee
February 23, 2007

Senator McDonald, Representative Lawlor and members of the Judiciary Committee, thank you for the opportunity to submit written testimony to the Committee on Senate Bill 1044, An Act Concerning Discrimination.

My name is Alix Simonetti. I am an attorney and a member of the executive committee of the Connecticut Bar Association Human Rights and Responsibilities Section. The section is comprised of approximately 100 attorneys who are interested in legislation concerning civil rights and discrimination law. On behalf of the CBA Human Rights and Responsibilities Section, I respectfully request that the Judiciary Committee **favorably report** Senate Bill 1044.

Senate Bill 1044 would extend statutory protections against discrimination to claims of discrimination based upon gender identity or expression. It would bar gender identity or expression discrimination in employment, in housing and in public accommodations, as well as in several other contexts. The bill codifies the Declaratory Ruling in the matter of John/Jane Doe, issued by the Commission on Human Rights and Opportunities on November 15, 2000. The Doe Declaratory Ruling clearly points out the developing authority in the courts clarifying that gender identity and expression are covered under the prohibition of discrimination on the basis of gender in nondiscrimination statutes including but not limited to Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, and the Equal Credit Act.

In the Doe Declaratory Ruling, the Commission adopted the definition of "gender identity" as "having or being perceived as having a self-image, expression or identity not traditionally associated with one's sex at birth." Doe Declaratory Ruling, page 20 quoting from Leonard, "The New York Law School Journal of Human Rights, CHRONICLING A MOVEMENT: A Symposium to Recognize the Twentieth Anniversary of the Lesbian/Gay Law Notes" (2000). "[G]ender identity' concerns which gender an individual feels s/he is." Doe Declaratory Ruling, Page 20 note 16.

The Declaratory Ruling acknowledged the developing legal authority clarifying the protections included in gender anti-discrimination law. The Court considered sex stereotyping to be another form of sex discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq. Doe Declaratory Ruling, p.14 in Price Waterhouse v. Hopkins, 490 U.S. 228 (1989) (Hopkins candidacy for partnership was denied because she did not act femininely enough, she was accused of being “aggressive,” “macho,” somewhat masculine....” “[H]er employers determined that [Hopkins] failed to conform to socially constructed gender expectations.” Doe, p. 14) “In the specific context of sex stereotyping, an employer who acts on the basis of a belief that a woman cannot be aggressive, or that she must not be, has acted on the basis of gender.” Doe p.14 (quoting from Price Waterhouse 490 U.S. 250.) Other courts have followed the Price Waterhouse analysis. The Court applied the Equal Protection Clause to gender stereotyping and held that that “the Equal Protection Clause requires state actors to look beyond the surface before making judgments about people that are likely to stigmatize as well as to perpetuate historical patterns of discrimination.” Doe Declaratory Ruling, p. 15-16 (quoting from J.E.B. v. Alabama, 511 U.S. 127, 140 n.11 (1994)(selection and exclusion of jurors on the basis of gender is impermissible).) The Ninth Circuit applied Title VII in a case where a prison guard abused a male prisoner who did not act like a male. The Court found that “Under Price Waterhouse, “sex” is the biological differences between men and women—and gender. Discrimination because one fails to act in the way expected of a man or woman is forbidden under Title VII.” Doe Declaratory Ruling p.18 quoting from Schwenk v. Hartford, 204 F.3d 1187 (9th Cir. 2000). The First Circuit applied the Equal Credit Opportunity Act in Rosa v. Park West Bank and Trust Company, 214 F.3d 213 (1st Cir. 2000)(loan applicant was sent home to change clothing when his clothing did not match the gender in his identification papers). (Also See: Barnes v. City of Cincinnati, 401 F.3d 729 (6th Cir. 2005); Smith v. City of Salem, Ohio, 378 F.3d 566 (2004); Mitchell v. Axcan Scandipharm, Inc., 2006 WL 456173 (W.D. Pa).) As the Doe Declaratory Ruling explains, the case law authority interpreting gender identity and expression discrimination as gender discrimination continues to grow.

The Doe Declaratory Ruling (p.20) concluded that “[P]rejudice and bigotry unfortunately are still prevalent in our society and they are facts to which we cannot close our eyes and pretend they do not exist.” The Commission’s Declaratory Ruling held that discrimination on the basis of gender identity or expression would violate Connecticut’s ban on sex discrimination. Adding to the statute specific language with respect to gender identity or expression clarifies the statute to all readers and confirms the State’s commitment to all of its citizens.

Thank you, again, for allowing me the opportunity to comment on Senate Bill 1044. The CBA Human Rights and Responsibilities Section respectfully requests that the Judiciary Committee **approve** Senate Bill 1044.