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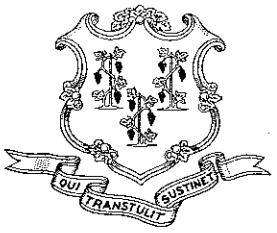

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February 24, 2009

Good afternoon Senator Prague, Representative Ryan and members of the Labor and Public Employees committee. I am here today to testify in support of two bills, SB 733, An Act Creating A Civil Action For A Consumer Reporting Agency Reporting A Prospective Employee's Erased Criminal Record and SB 365, An Act Concerning Captive Audience Meetings.

SB 733, An Act Creating A Civil Action For A Consumer Reporting Agency Reporting A Prospective Employee's Erased Criminal Record would allow a prospective employee who has been harmed by the release of inaccurate background check information to bring a civil action against the responsible party. Over the last two years, the Connecticut General Assembly passed two public acts (07-243 and 08-53) to address the fact that when the Judicial Branch sold conviction information to private entities that performed background checks for employers (for a fee) the records were not updated when a pardon had been

granted or charges had been nolled. These acts were extraordinarily important because producing background checks with outdated information can have devastating consequences for residents who have straightened out their lives and are making every attempt to be productive citizens of our state. SB 733 would create a remedy when a prospective employee is harmed by negligent behavior of persons providing background checks. Initially the proposed bill was misunderstood and not drafted to my specifications; I have attached my suggested substitute for SB 733 at the end of this testimony.

SB 365, An Act Concerning Captive Audience Meetings would prevent employers from firing or otherwise disciplining employees who would prefer not to be compelled to listen to employer speeches about religion or political matters, including labor organizing. The First Amendment to the Constitution guarantees the rights to freedom of speech and assembly. These freedoms include the right not to assemble or listen to coercive speeches.

This legislation would protect an employee from economic sanction if the employee chooses not to listen to an employer's political or religious views. Political views are defined to include views about the decision to join a political, social or community group or activity, including the exercise of the rights to join or not to join a labor union. For example, the legislation would protect an employee who declines to participate in a meeting called by an employer to express anti-union views. Physical restraint is actionable under current state law, yet a threat

to fire an employee if he or she does not attend a coercive meeting is not actionable. There is no good reason for this distinction: coercion is coercion, whether it is physical or economic. And it is wrong.

It should be the policy of our state as expressed in legislation to prevent employer coercion as to political matters, and we need to include speech about joining a union as well, because unionization is a political topic. It concerns a distinct approach to governing the economy. It is based on the view that there is a conflict of interest between employers and workers in this society, and that workers are better protected by acting collectively than individually. Those are political views. Therefore we should not discriminate against labor by leaving the statute silent on this point. We need to stand up against the coercion of employees into listening to speeches about matters other than how to do their jobs, such as whether the employee should join a particular church, union or political party. Our best constitutional tradition underscores this principle.

I also believe that there should be an exemption for certain types of entities. An organization devoted to religion should be able to require its employees to adhere to the same faith that the organization espouses and to observe its tenets and practices; an organization formed for the sole or dominant purpose of political action should be able to require its employees to adhere to and work in support of the organization's political tenets and program; and an educational

institution should be able to require student instructors to attend lectures on political or religious matters which are part of regular coursework for which all students are responsible. These exemptions would appear reasonable.

I have always believed that assertions that this type of legislation would be preempted by the National Labor Relations Act (NLRA) were mistaken. States may place conditions on entities that receive state money in order to support or encourage compliance with state public policy. Section 8(c) of the NLRA provides that it is not an unfair labor practice for an employer to express a view about unionization, which could include giving a speech in opposition to unionization. 8(c) does not, however, grant employers the right to require that employees be gathered against their will to listen to such views. Nothing in the proposed legislation limits what employers can say or where an employer can say it. Rather, the legislation would make it unlawful for an employer to force an employee, through the threat of physical or economic restraint, to listen to employer views on the subject of unionization or other political issues. A state is not preempted from providing protection to employees who choose not to be compelled to attend meetings where they may be subjected to an employer's propaganda on political topics. Protection from such abuse is certainly essential where there is a substantive financial relationship between the state and the employer. Clearly, where the employee believes that the communication concerns an issue such as health, safety, or economic interests there would be

nothing in the bill to impede meetings or any other form of communication. Neither Congress nor the courts have ever determined that captive audience speeches are to be encouraged.

The Connecticut General Assembly and the courts have a long tradition of support for the use of the police power to protect employees from coercion in the workplace and to protect privacy interests. This bill stands in that proud tradition. A worker does not relinquish all of his or her First Amendment Rights merely because he or she is in the workplace. Certainly the state can and should offer these protections to employees of state supported entities.

An Act Concerning the Use of Criminal Conviction Information.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (Effective July 1, 2009) Any aggrieved person may enforce the provisions of section 31-51i and section 54-142e of the general statutes as revised to 1/1/09, by means of a civil action. Any employer, employer's agent, representative or designee or consumer reporting agency or its agent, representative or designee that through negligent or willful conduct violates any provision of section 31-51i or section 54-142e of the general statutes as revised to 1/1/09, or who aids in the violation of any provision of said sections shall be liable to the person aggrieved for special and general damages, together with attorney's fees and costs.