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Testimony of Michelle N. Holmes, Esq.

RE: S.B. No. 1156 (RAISED) AN ACT CONCERNING THE RIGHT TO A JURY TRIAL IN CERTAIN ACTIONS ALLEGING DISCRIMINATORY PRACTICES

Good morning Honorable Committee Members:

My name is Michelle Holmes and I am a civil rights attorney practicing in Waterbury, Connecticut. I am dedicated to representing employees who have been discriminated against in the course of their employment.

Thank you for allowing me to testify this morning. In particular I want to thank Senator Hartley who invited me to attend. The issue of allowing your constituents to avail themselves to a jury trial in cases which the State of Connecticut is the employer is one that is very important to me and my clients. When I contacted Senator Hartley she was kind enough to meet with me and not long after that I find myself here testifying before you all. Whatever the outcome of this bill, I am appreciative of the Senator's efforts to bring this matter before you and including me in this very important process.

Recently I was on trial in a case that named the State of Connecticut as a defendant employer. The action was brought pursuant to our state fair employment statutes in Hartford Superior Court. Typically once the pleadings are closed, I will claim the case to the jury list. However, I had forgotten that because the claim was brought under §46a-100 the State would immediately move to strike me from the jury list.

I quickly reviewed the case law on this issue, as it had come up in the past, and recalled that the Courts routinely grant such motions to strike on the ground that the right to a jury trial against the State for wrongful discharge did not exist prior to 1818 and therefore the only way to obtain such a right would be for our legislature to specifically state such language in the statute.

As a result, I contacted Senator Hartley because litigating this issue appeared unavailing. That is why I am here today; to support S.B. No. 1156.

A rule that allows only a judge to decide whether the State of Connecticut, one of if not the largest employer in our state, violated an employees civil rights, rather than a jury of



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ones peers, seems inherently unfair. In fact, placing that burden on judges, when they too are employees of the state and appointed by our Governor, is a conflict.

Also it is important to consider federal law, such as Title VII as amended in 1991, cases against the state. When you bring a claim pursuant to Title VII against the State, not only has the states sovereign immunity been waived, one is also entitled to have the claim heard by a jury. In Connecticut, our Courts have always closely tracked Title VII with the Connecticut Fair Employment Practices Act. It should follow then that our state statutes should unambiguously affirm that employees alleging discrimination by the State employer also have the right to a jury trial.

I have not fully litigated this issue and do not purport to have considered every angle of this proposed bill. I do know that in my recent case, I had a jury hearing one of my claims and a judge hearing the discrimination claim against the State employer at the same time. This process was confusing and burdensome. The whole situation forced me to make choices that were essentially unfair to my client. I do not believe that jurors will award runaway verdicts; jurors are fair and reasonable people. I believe in our jury system and do not see why the State should be removed from that process especially in the case of alleged civil rights violations. I note that in my case, we still had to pick the jury for my other claims so there was no savings as to cost or judicial economy.

Respectfully, I ask that our legislature make this change to the language of the statute as the Courts have made clear that it is this branches decision that will control. All employees, including those employed by the state, should have the right to a jury trial.