Chairmen Bartolomeo and Witkos, Ranking Members Willis and Betts, and Members of the Higher Education and Employment Advancement Committee, thank you for the opportunity to speak today on SB 636 “An Act Concerning Affirmative Consent.”

For the record, my name is Nathaniel Warner and I am the Vice-President of the Wesleyan College Democrats. I am presently an enrolled sophomore at Wesleyan University in Middletown. I grew up in New Haven, went to high school in Wallingford, and have spent my entire life as a proud Connecticut resident. Today, you have the opportunity to make me still prouder by voting in support of this Act and ensuring that only “Yes!” means “Yes” in the state of Connecticut. To be clear, I speak to you today in resolute support of SB 636.

From 2005 to 2007, the National Institute of Justice sponsored a study of sexual assault and intimate partner violence that produced the now well-known statistic that 19.8%, or right around 1-in-5, women suffered a completed sexual assault—in most cases, that means it met the legal definition of rape—before completing their senior years in college.¹

Affirmative consent statutes create healthy mindsets about sex. They make bystander intervention easier, and they make sexual encounters safer. They rewrite a perverse social lexicon in which silence means “go-ahead” and a too-quiet “no” reads “they were asking for it.” Affirmative consent standards create communities wherein not fighting hard enough does not foreclose your rights to your own body.

But I am not here today to speak on the prevalence or nature of sexual assault. Sexual assault happens, it happens often, and, even more often than that, it happens without punishment for the perpetrator. This Act would help ameliorate that and on those grounds alone I believe you should vote in favor of its passage.

However, I wish to use my time today to address a common trepidation concerning the breadth of affirmative consent. Namely, there is a real fear that an affirmative consent standard is overbroad and universities should, instead, recognize implicit as well as explicit consent. Otherwise, concludes the belief, benign actions will be labeled as sexual assaults and jails will swell with luckless dating novices who had the misfortune of leaning in for the ever-awkward first-kiss without asking their date first. Such was the sentiment expressed by law professor David Bernstein in an op-ed in The Washington Post back in June.²

Recognizing the intuitive appeal of this claim, it is critical to understand that the nature of consent is more fluid, and less contractual, than this characterization allows. Certainly, an affirmative consent standard demands ongoing consent, but it does not stipulate with precision the form that this must take. Parties to a sexual act may and must decide for themselves what a “Yes!” means and for how long it means that. The principal change that affirmative consent secures is an assurance, at the outset, that both parties are enthusiastic, conscious, and communicative. In other words, it makes sure that a conversation about what consent means, and if all parties have it, occurs. It all other regards, it preserves and even heightens authorship over sexual behaviors.

I ask you to support this Act because consent matters, because silence should never mean “yes” and because sexual assault is a problem, but it is one we can address. This is how we do that.

² David Bernstein, “YOU are a rapist; yes YOU!,” The Washington Post, June 23, 2014.