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Testimony of
Jacob Wasserman

242 Elm Street, Suite O41B
New Haven, CT 06511

Ward One Co-Chair,
New Haven Democratic Town Committee

Former Vice President,
Yale College Democrats

In favor: H.B. No. 5376
An Act Concerning Affirmative Consent

My name is Jacob Wasserman, Ward One Co-Chair of the New Haven Democratic Town Committee and former Vice President of the Yale College Democrats, and I am here to testify in favor of H.B. No. 5376.

Please ponder for a second this simple question: members, would you mind if I take a seat on the committee? Could I sit up there at the dais in the hearing room, cast some votes, the works? I'd be quite surprised if you granted this request, of course. But what if you had stared at me, speechless, instead of telling me no? Under the current logic of most Connecticut public colleges' sexual conduct policies, I'd be up on that dais with you. You didn't say no, after all.

This example is admittedly absurd. But it shows a basic truth: the way people communicate in sexual situations is, at a fundamental level, no different than any other interaction. At a young age, we all learn that you must receive a "yes"—either verbally or through clear non-verbal signaling—before borrowing a toy or arranging a play-date. Failing to get a "no" is not enough, as any kindergartener could tell you. Sexual interaction is no different.

Contrary to the fearmongering that a vocal few have spread, healthy, normal sex operates by affirmative consent. Affirmative consent is not a pie-in-the-sky aspiration; it's actually a bare minimum of sexual interaction. If a person does not say "no," but makes no signs at all towards consent, he or she clearly should not be assumed to want sex, in the same way as any non-sexual request would operate. As policy stands now, there is a double standard between sex and other forms of interaction, where sex for some reason has a nonsensical lower threshold. We should bring our laws into line with actual practice.

Affirmative consent suffers from a number of misconceptions, which I hope to clarify. First, there is unfortunate confusion about what consent entails. No, affirmative consent does not mean signing a contract, as some have parodied. Consent does not even mean that a person must utter the word "yes" at every single step. Instead, consent can be, and often is, non-verbal. Humans use body language to communicate clearly and precisely all the time: nods of the head, handshakes, and high-fives. Again, the same is true for sex as for other interactions. Just because consent can be non-verbal does not mean that consent is blurry. It is, in fact, a very clear line: "yes" means "yes." The exact way one indicates "yes" may vary. But the difference between "yes" and not "yes" is still clear regardless of whether one nods or says "certainly."

Affirmative consent also does not at all affect the presumption of innocence. The accused in a sexual assault case is still assumed innocent until proven guilty. All that changes under affirmative consent is what the accused is presumed innocent of. Under the current rules,

the accused must be shown to have received a “no.” Under this proposal, the accused must be shown not to have received a “yes.” Either way, innocence is the default, the burden of proof is unchanged, and due process is maintained.

While affirmative consent meets every legal standard and conforms to common practice, let’s not lose sight of the true victims here. Sexual assault is a horrific crime, especially for victims—men and women—of college age. In 2013, the most complete recent data I could find, every single state school reported at least one sexual assault, with the total statewide topping 100. And that count vastly underestimates the many, many unreported sexual crimes which occur with shocking frequency. But affirmative consent will help victims feel more comfortable coming forward, as it already has at Yale and the University of Connecticut. It has been shown to create a healthier, safer sexual climate, a goal I believe we all share.

A good policy aligns common sense with helping victims and with protecting the rights of the accused. Affirmative consent does all of that and more. Do not let it get caught up behind budget fixes again; it’s too important. So please, members of the committee, say “yes” to “yes’ means ‘yes.’”