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Testimony in strong opposition to HB 5376 An Act Concerning Affirmative Consent March 1, 2016

Senator Bartolomeo, Rep. Willis, and members of the Higher Education and Employment Advancement Committee:

I am an autistic adult and have been for the past several years a prominent advocate on a range of disability issues here at the Capitol. I wish to express my strong opposition to HB 5376, An Act Concerning Affirmative Consent, and particularly its harmful impact on college students with disabilities in general and autistic students in particular.

At the outset, I want to note that I agree with many other criticisms of this unconstitutional legislation, which trivializes sexual assault by equating a missed social cue with the violence of rape. HB 5376 violates both due process and equal protection, reversing the presumption of innocence that is a hallmark of American jurisprudence. It codifies campus kangaroo courts, where the accused is assumed guilty and has to prove his or her innocence to a charge of sexual assault, into state law. It violates equal protection by holding college students to a far different standard than the public at large and government officials in particular. It is worth noting that Vice President Joe Biden has been repeatedly photographed kissing and putting his hands on young girls in clear violation of their “affirmative consent.” (Please note pictures at the end of my testimony as well as this link: <http://thefederalist.com/2015/01/07/holy-hell-would-be-unleashed-on-handsy-joe-biden-if-he-were-conservative/>) It also will likely have a disparate impact on students who are members of racial or ethnic minorities, and will definitely be a weapon against students who espouse unpopular political views and those with disabilities, especially autistic students.

Autism is a pervasive disability which affect numerous areas of an autistic person’s life. Being autistic, one thing I have extreme difficulty with is reading other people’s social cues. I can be in a conversation with someone, and she will walk away or turn her head away, and I will continue talking because I will not recognize that she is no longer interested in talking to me. Imagine a similar situation with an autistic student on a college campus involving physical contact, with that student not recognizing the other person’s body language as she or he withdraws “affirmative consent” as defined by this legislation, with the autistic student being tried without due process, expelled, and branded as a sex offender for life.

A similar situation happened last year in Waxahachie, Texas, where a 20-year-old autistic student was suspended from class at Navarro College for mistakenly hugging a stranger and kissing her on the head when he thought she was a woman he knew:

<http://www.nbcdfw.com/investigations/Student-With-Autism-Kicked-Out-of-College-288108301.html> The school had labeled the student's behavior a "sexual assault" even if there was clearly no sexual intent and no contact with intimate parts of the body, because of "affirmative consent" rules. Hans Bader comments on this case on the website "Minding the Campus": <http://www.mindingthecampus.org/2015/01/autistic-student-suspended-for-mistaken-hug-and-kiss/>

This is an interesting potential case that illustrates how the ever-expanding definition of "sexual assault" on some college campuses apparently reaches well-meaning conduct that is not sexually-motivated at all and does not even involve intimate areas of the body, much less sex. (It may also pit broad college policies designed to comply with the Obama administration's interpretation of Title IX against broad duties to accommodate disabled students under the Rehabilitation Act and Americans with Disabilities Act).

This sort of application also is a logical argument against broad "affirmative consent" rules that require advance permission for not just sex, but also ordinary touching and kissing, and classify any failure to obtain advance permission as "sexual assault" (even if it was not against the will of the complainant at the time it occurred). "Affirmative consent" activists now want to extend such rules micromanaging commonplace interactions into the nation's Kindergartens to cover even non-sexual contact. Sexual assault policies and laws should protect people from violence and unwanted intimate invasions, not relatively harmless activities that simply lack advance authorization.

I would especially focus on Bader's reference to our obligation to accommodate disabled students under the Rehabilitation Act of 1973 and the ADA. Keeping in mind that proponents often deny and deride an autistic, literal interpretation of "affirmative consent" that requires explicit verbal consent for every single touch and movement, and often explicitly emphasize consent through non-verbal body language, the disability-discriminatory nature of "affirmative consent" laws and policies should be clear. This discrimination may also affect students with cognitive and other disabilities as well.

Most autistic people, who generally prefer direct communication, can fully understand that no means no. An explicit verbal "No" sends a message to us in a way that body language often does not. Moving to an "affirmative consent," "yes means yes" standard would entrap autistic students in situations where they had no intent of violating the rights of their accusers.

Finally, while sexual assault is a serious crime and sexual assault on college campuses is a serious issue, I would suggest that the exclusive focus on consent, "affirmative" or otherwise, ignores the main problem, which is hookup culture. Why are our young college students engaging in all of this commitment-less, frat-party sexual behavior in the first place? Perhaps the loosening of social mores has been a deep disservice to young women in particular, who are giving in to hookup culture even as they yearn for the lasting commitment of marriage. It also disserves autistics who benefit from structure and boundaries. Here, the language of "yes means yes" sends the wrong message that mere consent makes hookup culture acceptable.

I would thus implore that you reject HB 5376. At the very least, you should consult with knowledgeable people in the disability community to understand the harmful impact "affirmative consent" laws have on autistic and other disabled students.

Vice President Biden holds, nuzzles, and kisses Senator Christopher Coons' daughter without her "affirmative consent"—indeed, she is pulling her head away from him.



Another example of Vice President Biden kissing a girl and holding her on both sides of her face. Note the difference between the girl's facial expression and stiff arms versus the smiling adults around her; clearly "affirmative consent" is lacking. Acts of affection permitted to Biden are very similar to what got an autistic student suspended from Navarro College.

